

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**

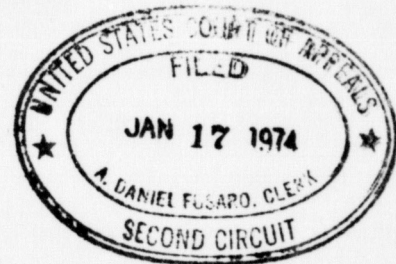




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74-2452

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT



DIEMATIC MANUFACTURING CORP.,  
*Plaintiff-Appellee,*  
—against—

PACKAGING INDUSTRIES, INC.,  
*Defendant-Appellant.*

On Appeal from the United States District Court  
for the Southern District of New York

**DEFENDANT-APPELLANT'S APPENDIX**

GERARD A. DUPUIS  
MILLER & SUMMIT, ESQS.  
90 Broad Street  
New York, New York 10004  
*Attorneys for Defendant-Appellant*

ELIOT S. GERBER  
WYATT, GERBER & SHOUP  
230 Park Avenue  
New York, New York  
*Attorneys for Plaintiff-Appellee*

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## APPENDIX

74 CIV. 1557

## Docket Entries

RECEIVED

Date Order  
Judgment N

- Apr. 5-74 Filed complaint & issued summons.
- Apr. 9-74 Filed pliffs affdvt, notice of motion & memo of law in support of motion, for a stay of arbitration. Ret. 4-19-74.
- pr. 19-74 Filed defts' affdvt & notice of cross motion for a stay.
- pr. 19-74 Filed defts' affdvt in opposition to motion for stay of arbitration.
- pr. 19-74 Filed defts' memo of law in opposition to motion for stay of arbitr.
- ay 8-74 Filed defts. notice of motion to dismiss complaint. Ret. 5-10-74.
- May 8-74 Filed defts. memo of law in support of motion to dismiss.
- ay 8-74 Filed summons with marshals return served Packaging Industries by C. Bolton 4-18-74.
- ep. 13-74 Filed pliffs memo in opposition to defts motion to dismiss the complt.
- Sep. 13-74 Filed Memo-End. on motion of 4-9-74. Motion granted. See opinion of this date.....MAC MAHON, J.
- Sep. 13-74 Filed Memo-End. on cross-motion of 4-19-74. Motion denied. See Opinion of this date....MAC MAHON, J.
- Sep. 13-74 Filed Mem-End. on motion of 5-8-74. Motion denied. See Opinion of this date.....MAC MAHON, J.
- ep 13-74 Filed Opinion #41168...Pltff's application for an order staying the arbitration proceeding, entitled "Packaging Industries, Inc., Petitioner Vs Diematic Manufacturing Corp., Respondent/Commercial Arbitration" is granted. Deft's cross-motion for a stay of this action pending arbitration is denied. Deft's motion to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted, Rules 12(b) (1) and (6), is denied. Settle order on notice within 10 days...MacMahon, J. m/n
- Sep. 18-74 Filed defts notice to take deposition of pliff.
- ep. 27-74 Filed Slip & Order that examination before trial of pliff is adjourned to 10-21-74, with conditions as indicated.....MAC MAHON, J.
- Oct. 3-74 Filed pliffs first set of interrogs to deft.
- ct. 2-74 Filed Consent Order staying pliffs application for arbitration proceedings which is granted. Defts cross-motion for a stay of this action pending arbitration is denied, & defts motion to dismiss the complt is denied.....So Ordered, MAC MAHON, J.
- ct. 29-74 Filed defts notice of appeal to USCA from order granting a stay of arbitration of 9-30-74. Copy sent to: Wyatt Cerber & Shoup, 230 Park Ave., NYC 10017. Bond posted on appeal - \$250.
- ct. 29-74 Filed Stip & Order that defts notice to take pliffs deposition is withdrawn re stip of 9-23-74. Defts time to answer or move re complt is adjourned to & including the tenth day after a final determination is rendered upon the appeal filed by deft from order of 9-30-74. Defts time to serve answers to pliffs first set of interrogs is adjourned to 30th day after a final determination upon the appeal.....So Ordered, MAC MAHON, J. m/n
- ec. 5-74 Filed notice that original record on appeal has been certified & transmitted to the USCA.

A TRUE COPY  
RAYMOND F. BURCHARDT, Clerk

By *[Signature]*  
Deputy Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
DIEMATIC MANUFACTURING CORPORATION, : 73 Civ. 1557 - LEM  
Plaintiff, :  
-vs- : NOTICE OF APPEAL  
PACKAGING INDUSTRIES, INC., :  
Defendant. :  
----- x

Notice is hereby given that Packaging Industries, Inc., the defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order granting a stay of the arbitration proceeding entitled "Packaging Industries, Inc., Petitioner, vs. Diematic Manufacturing Corp., Respondent-Commercial Arbitration" and denying a motion for a stay of this action pending arbitration, which order was entered in this action on the 30th day of September, 1974.

Dated: October 29, 1974

MILLER & SUMMIT

BY: *Herard A. Dupuis*

A Member of the Firm  
Attorneys for defendant  
Packaging Industries, Inc.  
Office & P. O. Address  
90 Broad Street  
New York, New York 10004  
(212) 943-8085



**A**

3a

TO: Chief Clerk  
United States District Court  
Southern District of New York  
United States Court House  
Foley Square  
New York, New York

Wyatt, Gerber & Shoup  
Attorneys for Plaintiff  
230 Park Avenue  
New York, New York 10017



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUNE 1974

DIEMATIC MANUFACTURING CORP.,  
Plaintiff

-VS-

PACKAGING INDUSTRIES, INC.,  
Defendant

74 CIV. 1357

Civil Action No.

COMPLAINT

Plaintiff, complaining of the Defendant's actions

states:

- Count I -

DECLARATORY JUDGMENT ACTION FOR  
PATENT INVALIDITY AND NON-INFRINGEMENT

FILED  
U.S. DISTRICT COURT  
S.D. N.Y.  
APR 5 7 25 PM '74

1. Plaintiff Diematic Manufacturing Corp. is a corporation organized and existing under the laws of the State of New York, with offices and principal place of business located at 220 West 19th Street, New York City, New York 10011.

2. Upon information and belief, defendant Packaging Industries, Inc. is a corporation organized and existing under the laws of the State of Massachusetts, with offices and principal place of business located at Airport Road, Hyannis Port, Massachusetts, and does business in this District and elsewhere in the State of New York.

3. This Count I is an action for declaratory judgment under Title 28, United States Code Section 2201, for the purposes of determining an actual controversy between the parties, as is more fully set forth below. <sup>h</sup> This actual controversy and claim arose in this District by the Demand For Arbitration and associated allegations, as set forth below. <sup>h</sup>

4. Jurisdiction and venue of this Count I are based upon Title 28, United States Code Section 1338(a) and Section 1391(b) and (c) and on the Patent Laws of the United States Title 35 United States Code.

5. Plaintiff, in addition to other business activities, is engaged in the manufacture and sale of trays for heat-sealing used in connection with machines in the blister packaging industry.

6. Upon information and belief, defendant is the owner of United States Patent No. 3,170,275 which issued on February 23, 1965 for an alleged invention entitled "Means For Heat Sealing Lids On Blisters".

7. Upon information and belief, defendant is engaged in the business of manufacturing and selling devices of the type disclosed in said United States Letters Patent No. 3,170,275.

8. Upon information and belief, defendant is engaged in, and does business in, this District and elsewhere in the State of New York. Defendant negotiates contracts and accepts



orders in this District and elsewhere in the State of New York. Such contracts include a certain license agreement and Covenant Not To Sue between the parties. Such contracts further include a license under the patent 3,170,275 to another company in this District. Defendant's officers solicit business in this District and elsewhere within the State of New York. Defendant's salesman, including Edward Hutzpoh, solicit business within this District and elsewhere in the State of New York. Deliveries pursuant to sales made in this District and elsewhere in New York State are made by trucks operated by defendant. Defendant displays its goods and services offered at various shows in New York, including the AMA Packaging Show in New York City and the Society of Plastic Engineers - National Packaging Exposition in New York City. Defendant derives substantial revenue from its sales in New York.

9. Defendant has claimed that plaintiff's trays are within the scope of defendant's Patent No. 3,170,275 and has requested that sales of plaintiff's trays be discontinued.

10. In a letter dated March 21, 1974 (a copy of which is attached hereto as Exhibit 1) to American Arbitration Association in this District, an attorney representing defendant, Mr. Gerard A. Dupuis of Miller and Summit, demanded arbitration. Their "Exhibit A" to that demand stated that plaintiff's trays are within the scope of said patent and requested an injunction that plaintiff be prohibited from marketing its trays.

11. Upon information and belief, defendant has charged at least one of plaintiff's customers, namely, Franklin Metal Co. of Ft. Washington, Pennsylvania, with infringement of said United States Letters Patent No. 3,170,275 because of the customer's use of a tray supplied by plaintiff.

12. Plaintiff alleges that their trays do not infringe any valid claim of said Patent No. 3,170,275 and therefore neither plaintiff nor their customers have infringed defendant's patent.

13. Plaintiff alleges that said Patent No. 3,170,275 is invalid.

14. An actual controversy exists between the parties hereto with respect to charges by the defendant that plaintiff has infringed said Patent No. 3,170,275 and with respect to the validity and enforceability of said Patent No. 3,170,275. This controversy involves and threatens the rights of plaintiff and plaintiff's customers to carry on their respective businesses concerning the manufacture, sale and use of plaintiff's trays free of interference, obstruction, restraint and attempted monopolization by defendant.

15. Upon information and belief, defendant's Patent No. 3,170,275 is invalid for one or more of the following reasons:

(a) The subject matter is not operative or useful and did not promote the progress of any science or useful art.

(b) The subject matter lacks invention or any patentable novelty.



(c) The differences, if any, between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

(d) The subject matter was known and was used by others in this country before the alleged invention or discovery thereof by the patentee.

(e) The subject matter was in public use and was on sale in this country prior to the alleged invention or discovery thereof by the patentees and for more than one year prior to their application. Two specific instances of such public use and on sale, in which goods were commercially and not experimentally manufactured and sold, were to R.D. Merchandising Corporation and to Hudgeons E-Z Products, Inc.

(f) The subject matter was patented and was described in one or more printed publications in this and in one or more foreign countries before the alleged invention or discovery thereof by the patentees and more than one year prior to their application.

(g) The subject matter was abandoned by the patentees.

(h) The patentees did not themselves invent the subject matter.

(i) The patentees were not the first inventors of the subject matter thereof in that, before the alleged invention thereof by the patentees, any invention embodied in its subject matter was made in this country by another who had not abandoned, suppressed or concealed it; wherefore the patentees unjustly obtained the patent for that which was in fact invented by another who was using reasonable diligence in adopting and perfecting the same.

(j) The specification was made to contain less than the whole disclosure relative to the alleged invention or discovery.

(k) The patent does not contain a written description of the subject matter and of the manner and process of making, constructing, compounding and using it, in such full, clear, concise and exact terms as to enable a person skilled in the art or science to which it pertains or with which it is most nearly connected, to make, construct, compound and use the same, does not explain the principle thereof and the best mode in which the patentees contemplated applying that principle, so as to distinguish it from other inventions; and does not particularly



point out the part, improvement or combination which the patentees claim as their invention or discovery.

(1) The patent does not particularly point out or distinctly claim the subject matter or the part, improvement or combination which the patentees claim or regard as their invention. Without limitation of the foregoing, the claims are indefinite, ambiguous, uncertain, functional and unduly broad.

(m) During the prosecution of the application, no matter was introduced into the disclosure of the invention. Defendant will be given notice by plaintiff in writing of the patents or printed publications and of the names and addresses of the persons who were prior inventors or had knowledge of the alleged invention as alleged in one or more of these paragraphs, at least 30 days before the trial hereof, in accordance with the provisions of Section 282 of Title 35 United States Code.

16. In view of the prior state of the art and the language of the claims of said patent, and by reason of the proceedings in the United States Patent Office in the prosecution of the application, defendant is estopped to assert that the claims of its patent have such scope as to cover plaintiff's trays.

17. Plaintiff has not directly infringed claims 1-5 and 11 of said patent which relate to a machine and not to trays,

as it has not made, used or sold machines within the scope of those claims.

18. Plaintiff has not contributorily infringed claims 1-5 and 11 and 12 of said patent by sales of trays for use in machines manufactured and/or sold by defendant, because purchasers of machines from defendant had a right to replace trays and such replacement did not constitute a rebuilding or reconstruction of the machine.

19. Plaintiff has not made, used or sold trays, at least since March 6, 1969, in which a second sheet of non-sticking or Teflon-like material overlays the electrode and having a first sheet of non-sticking or Teflon-like material, with the second sheet secured or adhered to the first sheet and the electrode, and consequently does not infringe claims 8 or 9.

20. All of plaintiff's trays made or sold since at least March 6, 1969 are trays for heat-sealing which are formed by an etching process and which do not utilize an electrode positioned between two sheets of non-sticking or Teflon-like material.

21. Plaintiff's trays, made at least since March 6, 1969, are licensed under Patent 3,170,275 by virtue of a "Covenant Not To Sue" signed by defendant.

22. Although plaintiff has signed an agreement one of



whose provisions was that plaintiff would not contest the validity of said patent, that provision is void or ineffectual or superseded by virtue or operation of law.

23. The Patent 3,170,275 is unenforceable by defendant against plaintiff because of estoppel and/or laches. Defendant, at least since 1969, had actual knowledge of the construction and elements of plaintiff's trays. The construction and elements of plaintiff's trays have remained the same since 1969. Plaintiff has expended monies and effort on its tray business since 1969, without protest or objection or suit by defendant.

- Count II -

ACTION TO ENJOIN ARBITRATION

24. This Court has jurisdiction of this Count II under the provisions of Title 28, United States Code Section 1338(a) and (b) and 1332(a) (1) and 1332(c) and Section 1391(a) and (c) and of the Patent Laws of the United States Title 35 United States Code and Title 9 U.S.C. Section 2 and New York Civil Practice Act Section 7503. The parties have diversity of citizenship and the matter in controversy exceeds \$10,000, exclusive of interest and costs. This claim arose in this District and the contract evidenced a transaction involving interstate commerce.

25. The allegations of paragraphs 1, 2, 5, 6, 7, 8, 9 above are repeated for the purposes of this Count II.

26. A previous law suit between the parties in this Court (65 Civ. 2007, Cal. No. 430-4) under the same Patent 3,170,275 was settled in 1968 by a series of documents.

27. One of those documents was a license agreement under Patent 3,170,275 between the parties. That license agreement provided, inter alia, that it "shall terminate at the end of said nine-month period" from the date thereof (June 6, 1968), which was March 6, 1969.

28. That license agreement provided for arbitration of "Questions of interpretation, enforcement and all disputes between the parties arising from this agreement". There is no dispute between the parties arising from the license agreement, as neither party contends that plaintiff is presently licensed by virtue of that license agreement.

29. By a letter dated March 21, 1974 defendant has demanded arbitration under the provisions of that license agreement.

30. Arbitration of the present dispute between the parties is not proper because:

- (a) that license agreement has, by its terms, been terminated as of March 6, 1969;



- (b) plaintiff does not contend it is presently licensed by virtue of that license agreement;
- (c) defendant contends that plaintiff is not presently licensed by virtue of that license agreement;
- (d) arbitration is not a proper forum to hear the parties' disputes as to patent validity, patent infringement and anti-trust violations as those are matters of exclusive jurisdiction of the Federal Courts. B

A Motion To Stay Arbitration is annexed hereto. A notice setting the date for that Motion To Stay Arbitration shall be filed after assignment of this case to a Judge of this Court.

31. A separate other document signed at the time of settlement of the previous case was a "Covenant Not To Sue" signed by defendant and directed to plaintiff and its customers. Defendant has violated that "Covenant Not To Sue" by making its demand for arbitration and by informing customers of their alleged infringement.

C 32. All of the trays made, used or sold by plaintiff since March 6, 1969 are covered by clause (i) of the "Covenant Not To Sue". C

33. The "Covenant Not To Sue" did not contain an arbitration clause.

- Count III -

ACTION FOR VIOLATION OF THE ANTI-TRUST LAWS

34. This Court has jurisdiction of this Count III under the provisions of Section 2 of the Sherman Act, 15 USC 2; and Section 4 of the Clayton Act, 15 USC 15; and 28 USC 1337 and 28 USC 1332(a)(1). This Count III is a civil action arising under Acts of Congress regulating commerce and protecting trade and commerce against restraints and monopolies. The parties have diversity of citizenship and the amount in controversy exceeds \$10,000 exclusive of interest and costs. The allegations of paragraphs 1, 2, 5, 6, 7, 8, 9 and 11 above are repeated here for the purposes of this Count III.

35. Defendant is the named assignee, on the face of the patent, of the entire right, title and interest in and to United States Letters Patent 3,170,275.

36. Howard A. Rohdin, at the time of the filing of the patent application which resulted in United States Letters Patent 3,170,275, on or about September 12, 1963, was a director and President of the defendant. He has been since that time, and is at the present time, a director and officer of the defendant. The Oath taken by the said Howard A. Rohdin and Adolf A. Rohdin as co-inventors of the application resulting in



Patent 3,170,275 included the statement that they did not know and did not believe that the said invention was in public use or on sale in the United States more than one year prior to said application.

37. Said statement in the Oath was willfully fraudulent and knowingly false, based upon the personal knowledge of Howard A. Rohdin of sales, offers for sale and public use of the method and means described and originally claimed in the application resulting in United States Letters Patent 3,170,275 for more than one year prior to the date of said application.

38. The knowing and willful misrepresentation of the facts, stated in Paragraph 37 herein, to the Patent Office was material and the making of such statements strips defendant of any exemption from the anti-trust laws; renders the United States Letters Patent 3,170,275 unenforceable and invalid; and constituted willful fraud on the Patent Office.

39. Defendant, by virtue of its fraudulently and illegally obtained United States Letters Patent 3,170,275, has attempted to monopolize, and has monopolized, the interstate and foreign commerce of heat impulse blister and card sealing machines and trays.

40. Defendant, with the full knowledge that those claims of United States Letters Patent 3,170,275 relating to

trays are invalid and fraudulently obtained by virtue of the aforesaid public use and sale in the United States more than one year prior to said application, has persisted in attempting to monopolize the interstate and foreign trade or commerce in such trays by threats of suit under those invalid patent claims and by bringing suit against plaintiff and others under those patent claims.

41. Plaintiff has been damaged by virtue of defendant's actions in defendant's attempted monopolization and monopolization of heat impulse blister and card sealing machines and trays by virtue of its illegally obtained United States Letters Patent 3,170,275.

42. Defendant, by its illegal acts of fraudulently obtaining the said Letters Patent 3,170,275 and by its monopolization or attempting to monopolize the trade or commerce of machines and trays for impulse heat sealing cards and blisters, has violated Section 2 of the Sherman Act 15 USC 2 and Section 4 of the Clayton Act 15 USC 15.

43. On information and belief, defendant possesses a dominant position in the United States in the relevant market relating to the machines and trays claimed as alleged inventions in said Patent 3,170,275.

44. Plaintiff is engaged in competition with the defendant in the manufacture and in the sale throughout the



United States of trays and machines for blister pack sealing.

45. On information and belief, defendant has engaged in an illegal course of conduct in an endeavor to restrain lawful competition, monopolize and attempt to create a monopoly position in the sale and manufacture of machines and trays for blister pack packaging in violation of the anti-trust laws and constituting patent misuse.

46. On information and belief, the suit patent herein was procured by actual or constructive fraud and with full knowledge that the subject matter thereof was not patentable to it in view of the state of the prior art known to it or in disregard to the readily available or readily ascertainable facts with respect thereto, all in furtherance of defendant's preconceived program of monopolization or attempt to monopolize and restrain lawful competition.

47. On information and belief, defendant has attempted to monopolize the interstate commerce of trays and machines for blister pack packaging by virtue of the fraudulently obtained patent in suit.

48. On information and belief, defendant has engaged in a program of selective threats of patent infringement and enforcement through infringement litigation instituted by it.

49. On information and belief, defendant brought the present arbitration knowing the falseness of its allegations in order to notify plaintiff's customers and prospective customers and the trade generally of the pendency of such arbitration so as to induce them not to buy from plaintiff.

50. On information and belief, defendant has misrepresented to customers, prospective customers and to the trade generally the rights of plaintiff to sell its trays and components thereof.

51. On information and belief, defendant has engaged in a program of disparagement of the nature and quality of plaintiff's trays to customers and prospective customers to unlawfully induce them to refrain from purchasing such trays from defendant.

52. On information and belief, plaintiff and its agents have improperly annoyed, harrassed and intimidated plaintiff's customers by threatening them with suits of infringement of its patent unless they cease using and/or purchasing plaintiff's trays, to the irreparable injury of plaintiff.

53. On information and belief, plaintiff is among the competitors of defendant injured by its aforesaid unlawful acts by reason of their loss of a large part of the relevant



market and have accordingly been deprived of substantial earnings and profits which it would have received but for defendant's unlawful practice. The plaintiff has sustained damages only ascertainable by an accounting and is entitled under 15 U.S.C. Section 15 to recover such damages threefold, together with costs of this suit and reasonable attorneys' fees.

WHEREFORE PLAINTIFF RESPECTFULLY PRAYS:

1. That the arbitration demanded by defendant against plaintiff be stayed and be permanently enjoined.
2. For a temporary and permanent injunction restraining defendant, its officers, agents, servants, employees and attorneys, and all persons in active concert or under the control of defendant, from asserting or charging that the use or sale by plaintiff or any of their customers of trays constitutes an infringement of U.S. Patent No. 3,170,275.
3. That this Court decree U.S. Patent No. 3,170,275 is not infringed by plaintiff or their customers.
4. That this Court decree U.S. Patent No. 3,170,275 to be invalid.
5. That plaintiff shall recover, under the provisions of the Clayton Act, threefold its damages sustained as a result of the defendant's actions as set forth above.

6. For the cost of this action and for reasonable attorney's fees.

7. For such other and further relief as this Court may deem just.

DIEMATIC MANUFACTURING CORP.  
Plaintiff

By: 

Eliot S. Gerber  
Wyatt, Gerber & Shoup  
230 Park Avenue  
New York, New York 10017  
Telephone (212) 679-7611  
Attorneys for Plaintiff

Dated: April 5, 1974.



A 22a

EXHIBIT I

MILLER & SUMMIT  
90 BROAD STREET  
NEW YORK, N. Y. 10004

WHITEHALL 3-8085

CABLE ADDRESS "MILLSUM"  
TELEX NO 128155 MILLSUM NYK

March 21, 1974

American Arbitration Association  
140 West 51st Street  
New York, New York

Attention: Commercial Arbitration Tribunal

Re: Packaging Industries, Inc., petitioner  
v. Diematic Manufacturing Corp.,  
respondent/Commercial Arbitration

Dear Sirs:

Enclosed herewith are two copies of a demand for arbitration pursuant to Section 7 of the Commercial Arbitration Rules of this association. As is noted in the demand, the arbitration being commenced by Packaging Industries, Inc. whom we represent, is pursuant to a contractual clause that provides for arbitration under the Rules and auspices of this association.

The original of the demand for arbitration and a copy of this letter is simultaneously being served upon respondent, Diematic Manufacturing Corp., at its last known address by certified mail, return receipt requested.

Also enclosed herewith is a check in the amount of \$200 pursuant to your Administrative Fee Schedule. As the relief sought is for an amount not known to the claimant, but which can only be deduced from an accounting of respondent's profits, and for a permanent injunction, the \$200 fee seems to be the appropriate one pursuant to your Fee Schedule.

NEILLER & SUMMIT

-2-

American Arbitration Association

March 21, 1974

As the arbitration agreement between the parties does not include the appointment of a specific arbitrator, and does not provide for any other method of appointment, it is respectfully suggested that the procedure stated in Section 12 to your Commercial Arbitration Rules is the appropriate one. We therefore request that you immediately submit to each party an identical list of names chosen from the Panel.

We are pleased to once again make use of your facilities, procedures and personnel. We have found your staff to be most courteous in the past and look forward to working with them again.

Very truly yours,

Gerard A. Dupuis

GAD:mv

Encl.

cc: Diematic Manufacturing Corp.  
(certified mail, return receipt requested)



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**COMMERCIAL ARBITRATION RULES  
DEMAND FOR ARBITRATION**

ATTACHMENT I

DATE: March 20, 1974

TO: (Name) Diplomatic Manufacturing Corp.

(of party upon whom the Demand is made)

(Address) 220 West 19th Street

(City and State) New York, New York

Named claimant, a party to an arbitration agreement contained in a written contract,

dated June 6, 1968

providing for arbitration, hereby  
demands arbitration thereunder.

(attach arbitration clause or quote hereunder)

Arbitration clause reads as follows:

"Questions of interpretation, enforcement and all disputes between the parties arising from this agreement shall be submitted to arbitration in New York City under the rules and auspices of the American Arbitration Association."

NATURE OF DISPUTE:

See Exhibit A attached hereto

CLAIM OR RELIEF SOUGHT: (amount, if any)

See Exhibit B attached hereto

PLEASE TAKE FURTHER NOTICE, that unless within <sup>twenty</sup> ten days after service of this Notice of Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

HEARING LOCALE REQUESTED: New York, New York

(City and State)

ONLY COPY AVAILABLE

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You are hereby notified that copies of our arbitration agreement and of this demand are being filed with the American Arbitration Association at its New York Regional Office, with the request that it commence the administration of the arbitration. Under Section 7 of the Commercial Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

Signed

*Miller & Summit*

(May be Signed by Attorney)

Miller & Summit

Name of Claimant

Packaging Industries, Inc.  
c/o Miller & Summit

Address (to be used in connection with this case)

90 Broad Street  
New York, New York 10004

City and State

Telephone

(212) 943-8035



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
DIEMATIC MANUFACTURING CORP.,	:	
Plaintiff	:	
-vs-	:	Civil Action No.
	:	74 Civ. 1557 L.F.M.
PACKAGING INDUSTRIES, INC.,	:	
Defendant	:	
-----X	:	

NOTICE OF APPLICATION AND MOTION FOR  
STAY OF ARBITRATION

TO : DEFENDANT PACKAGING INDUSTRIES, INC.

Plaintiff DIEMATIC MANUFACTURING CORP. will apply to Judge Lloyd F. MacMahon on Friday, April 19, 1974, at 2:15 P.M., or as soon thereafter as it may be heard, in the United States District Court for the Southern District of New York, Foley Square, New York, New York, for an Order staying, for the duration of this action, an arbitration before the American Arbitration Association entitled "Packaging Industries, Inc., Petitioner vs. Diematic Manufacturing Corp., Respondent/Commercial Arbitration", commenced pursuant to the Demand For

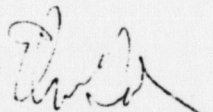
Arbitration dated March 21, 1974.

RECEIVED

APR 8 1974

MILLER & SCIMIT

Dated: April 5, 1974.



---

Eliot S. Gerber  
Wyatt, Gerber & Shoup  
230 Park Avenue  
New York, New York 10017  
Telephone (212) 679-7611  
Attorneys for Plaintiff



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
DIEMATIC MANUFACTURING CORP.,	:	
Plaintiff :	:	
	:	
-vs-	:	Civil Action No.
	:	74 Civ. 1557 L.F.M.
PACKAGING INDUSTRIES, INC.,	:	
Defendant :	:	
-----X		

AFFIDAVIT IN SUPPORT OF APPLICATION AND MOTION  
FOR STAY OF ARBITRATION

ELIOT S. GERBER, being duly sworn, states that:

- (1) He is the attorney in the above-entitled action for plaintiff Diematic Manufacturing Corp.;
- (2) In the early part of this week he discussed the withdrawal of the Demand For Arbitration with Elliot Miller, attorney for defendant Packaging Industries, Inc.;
- (3) The subject matter of the Application was not settled between the parties.

/s/ Eliot S. Gerber  
Eliot S. Gerber

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:  
Subscribed and sworn to before me

this 5th day of April, 1974.

/s/ Douglas W. Wyatt  
Notary Public

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
DIEMATIC MANUFACTURING CORP.,	:	
Plaintiff	:	
	:	Civil Action No.
-vs-	:	74 Civ. 1557 L.F.M
	:	
PACKAGING INDUSTRIES, INC.,	:	
Defendant	:	
	:	
-----X		

APPLICATION AND MOTION FOR STAY OF ARBITRATION

TO: DEPENDANT PACKAGING INDUSTRIES, INC.:

Plaintiff DIEMATIC MANUFACTURING CORP. hereby applies to the Court for an Order staying, for the duration of this action, an arbitration before the American Arbitration Association entitled "Packaging Industries, Inc., Petitioner vs. Diematic Manufacturing Corp., Respondent/Commercial Arbitration", commenced pursuant to the Demand For Arbitration dated March 21, 1974.

This application for a stay of arbitration is made on the complaint and proceedings herein, the affidavit and documents attached hereto, the points and authorities set forth in the memorandum attached hereto, and upon the following grounds:

(1) The Demand For Arbitration is based upon a license



agreement which, by its own express terms, expired on March 6, 1969;

(2) The relief demanded in the Demand For Arbitration is barred by the "Covenant Not To Sue" signed by Packaging Industries, Inc.;

(3) The relief sought in the Demand For Arbitration is for patent infringement, including an injunction, which relief is exclusively a subject of jurisdiction of the Federal Courts;

(4) The controversies between the parties involve claims of anti-trust violation and patent invalidity, subjects which are defenses to the relief sought by the demand for arbitration but are matters whose exclusive jurisdiction lies in the Federal Courts.

(5) The plaintiff has not participated in the arbitration.

---

Eliot S. Gerber  
Wyatt, Gerber & Shoup  
230 Park Avenue  
New York, New York 10017  
Telephone (212) 679-7611  
Attorneys for Plaintiff

dated: April 5 , 1974.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
DIEMATIC MANUFACTURING CORP., :  
Plaintiff :  
 :  
-vs- :  
 :  
PACKAGING INDUSTRIES, INC., :  
Defendant :  
-----X

MEMORANDUM IN SUPPORT OF APPLICATION AND MOTION  
TO STAY ARBITRATION

I. There Can Be No Arbitration Because The Agreement  
Has Expired

The defendant, Packaging Industries, Inc., has demanded arbitration by a letter dated March 21, 1974. A copy of their letter and demand is attached hereto as Attachment I.

Their demand for arbitration is based upon a patent license agreement dated June 6, 1968, a copy of which is attached hereto. That agreement, by its own terms (Par. I) expired on March 6, 1969.

The arbitration clause, paragraph VII, states, "Questions of interpretation, enforcement and all disputes between the parties arising from this agreement shall be submitted to arbitration ..." (emphasis added). The present dispute does

not arise from that agreement because that agreement expired more than four years before the present dispute arose.

II. There Is No Dispute Between The Parties As To The License Agreement

In its demand for arbitration the defendant, Packaging Industries, Inc., alleged that plaintiff is not licensed under the license agreement. We agree.

Both parties also agree that the license agreement has terminated.

Consequently, there is no dispute of the interpretation or enforcement of the license agreement. The parties' dispute as to infringement and its defense does not "arise" from the license agreement. The parties' present dispute arose after the termination of the license agreement and relates to different trays.



III. Patent Validity and Infringement Are Not Proper Subjects  
For Arbitration — Exclusive Jurisdiction Lies In The  
Federal Courts

Defendant's demand for arbitration of its allegation  
of patent infringement is improper for the following reasons:

(a) Defendant's claim of patent infringement arises  
from its statutory patent rights, 35 United States Code Section 271,  
and not from contract.

(b) The Federal Arbitration Act, 9 United States  
Code 2, does not cover patent validity disputes under the Patent  
Act. Even assuming, arguendo, that the parties had expressly  
agreed to arbitrate the patent validity question, their arbitra-  
tion agreement could not be enforced because a dispute as to  
patent validity or patent infringement is not a question involving  
"a maritime transaction or a contract involving commerce," as was  
held in Zip Mfg. Co. v. Pap Mfg. Co. 44 F.2d 184 (D.C. Del. 1930)  
and see In re Cold Metal Process Co. 9 F.S. 992 (D.C. W.D.Pa. 1935).  
As stated in the Zip Mfg. Co. case:

"The determination of the status of a patent,  
its validity or invalidity, its infringement or  
non-infringement, is a matter that is inherently  
unsuited to the procedure of arbitration statutes."

The New York State Arbitration Act is limited to  
"any controversy which may be the subject of an action". The  
term "action" means an action over which the New York Courts

have jurisdiction. The parties' dispute as to the infringement and validity of a patent is not a proper subject of arbitration because exclusive jurisdiction lies in the Federal Courts, see 35 United States Code Section 231 and 28 United States Code Section 1338(a).

IV. Arbitration May Deprive the Public and Plaintiff of The Opportunity To Test Patent Validity

In Lear, Inc. v. Adkins 395 U.S. 653 (1969) the Supreme Court pointed out the public's interest in limiting monopolies to those under valid patents. The Lear case stated:

"Surely the equities of the licensor do not weigh very heavily when they are balanced against the important public interest in permitting full and free competition in the use of ideas which are in reality a part of the public domain."

The arbitrators, if this case proceeded to arbitration, would have no power to declare the patent invalid. In contrast, this Court can declare the patent invalid and consequently open the monopoly to the public. Defendant is attempting to shield from public view its invalid and fraudulently obtained patent by hiding behind a secret arbitration proceeding.

In Beckman Instruments, Inc. v. Technical Development Corp. 433 F.2d 55,62 (CCA 9, 1970), in holding that patent validity was not a proper subject for private arbitration, the Court stated



at 63 that, "such questions are inappropriate for arbitration proceedings and should be decided by a court of law, given the great public interest in challenging invalid patents".

Incidentally, plaintiff is not barred to contest the validity of the patent regardless of any contractual undertakings to the contrary, in view of the Lear case.

VI. Defendant Is In Violation Of Its "Covenant Not To Sue"  
By Its Demand For Arbitration

Defendant, Packaging Industries, Inc., signed a "Covenant Not To Sue" directed to plaintiff, Diematic Manufacturing Corp. A copy is attached hereto.

That Covenant states that certain trays, described at clause (i), will not be charged with patent infringement. According to the enclosed affidavit, those trays are the only trays manufactured by Diematic.

In other words, Packaging Industries has demanded arbitration as to the exact trays upon which they covenanted not to sue.

The only question is: Is a demand for arbitration covered by the word "sue" as used in that Covenant?

"Sue", according to Black's Legal Dictionary, means "To prosecute by law; to commence legal proceedings against a

party". There should be no question that if Packaging Industries applied to a court to enforce its demand for arbitration its application would be a suit and so barred by the Covenant Not To Sue. We maintain, in view of the quasi-judicial character of the arbitration process, that the Covenant Not To Sue bars Packaging Industries from commencing an arbitration action by demand, just as it bars them by commencement by an application to enforce arbitration.

Respectfully submitted,

ELIOT S. GERBER  
WYATT, GERBER & SHOUP  
230 Park Avenue  
New York, New York 10017  
Telephone (212) 679-7611

Attorneys for Plaintiff

Dated: April 5, 1974



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
DIEMATIC MANUFACTURING CORP.,	:	
Plaintiff	:	
	:	Civil Action No.
-VS-	:	
	:	
PACKAGING INDUSTRIES, INC.,	:	
Defendant	:	
-----X	:	

AFFIDAVIT

STATE OF NEW YORK )  
: ss:  
COUNTY OF NEW YORK )

Being duly sworn, I, DAVID BAGOFF, hereby state:

1. I am the President of the plaintiff, Diematic Manufacturing Corp., of 220 West 19th Street, New York City, New York.

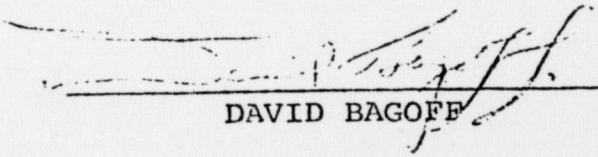
2. I have been, in the course of my duties, familiar with all the trays for heat sealing manufactured and sold by plaintiff.

3. Since March 6, 1969, all of the trays manufactured and sold by plaintiff were trays for heat sealing which are formed by an etching process and which do not utilize an electrode

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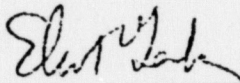
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positioned between two sheets of non-sticking material.

  
DAVID BAGOFF

Subscribed and sworn to before me

this 4th day of April, 1974.



Notary Public

ELIOT S. GERBER  
NOTARY PUBLIC, State of New York  
No. 4502854 Q. J. L. Westchester Co.  
Cert. filed in New York County  
Commission Expires March 30, 1975



COVENANT NOT TO SUE

PACKAGING INDUSTRIES LIMITED, INC., hereby covenants that it will not now, or in the future, sue DIEMATIC MANUFACTURING CORP., or its suppliers or customers, under United States Patent 3,170,275, issued February 23, 1965, and entitled "Means for Heat Sealing Lids on Blisters", in regard to the apparatus, listed below, made, made for, sold or used by DIEMATIC MANUFACTURING CORP. The said apparatus is: (i) trays for heat sealing which are formed by an etching process and which do not utilize an electrode positioned between two sheets of non-sticking material; or (ii) a machine for heat-sealing lids on blisters, which machine utilizes a closed loop heat control system employing a heat sensitive transducer, such as a thermistor, and which machine does not utilize a plurality of contacts having predetermined locations with each contact supplying a predetermined voltage differing from the voltage supplied by the others of said contacts, a prototype of the said machine

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having been shown at the A.M.A. Packaging Show at the New York Coliseum in May, 1968 or (iii) trays for heat sealing, of whatever description, which are built or rebuilt to incorporate a heat control for use in a machine as described in (ii) above.

PACKAGING INDUSTRIES INC.

By:

John O'Brien Vickers



This agreement is effective as of the 6th day of June, 1968, by and between Packaging Industries, Inc., of Off Airport Road, Hyannis, Massachusetts (previously Packaging Industries Limited, Inc.) hereinafter referred to as "LICENSOR", and Diamatic Manufacturing Corp., of 220 West 19th Street, New York, New York, hereinafter referred to as "LICENSEE".

1. License Grant

LICENSOR represents and warrants that it is the owner of the United States Patent 3,170,275, issued February 23, 1965, and entitled "Means For Heat Sealing Lids on Blisters", hereinafter referred to as "Licensed Patent", and that it has the right to grant licenses under said patent. The LICENSOR hereby grants to the LICENSEE under the Licensed Patent a non-exclusive license without any right to grant sub-licenses, to make, use, and sell, for the term of nine (9) months, trays, embodying and/or for practicing one or more of the inventions claimed by the Licensed Patent relating to trays and to have repair and replace-

ment parts made for such trays for said LICENSEE. This license is for a nine-month period from the date hereof and shall terminate at the end of the said nine-month period. However the royalty period, under Para. III, shall commence as of July 1, 1968.

II. Records and Accounting Periods

The LICENSEE shall keep accurate records at its regular place of business, showing its transactions in apparatus embodying and/or for practicing said inventions in sufficient detail to enable the royalties hereinafter mentioned readily to be ascertained; and such pertinent records shall be open to inspection during usual business hours, for verification of accounting reports hereinafter mentioned, by any certified public accountant of the LICENSOR acceptable to the LICENSEE and at LICENSOR's expense. The LICENSEE shall not unreasonably withhold its acceptance. The hereinafter mentioned royalties shall be paid by the LICENSEE at the termination of the said nine-month period. Royalty payments and an accounting for the said period will be due and payable thirty (30) days after the close of the said nine-



month period. Such accounting shall include an accurate statement by the LICENSEE of all apparatus embodying and/or for practicing the said inventions manufactured by the LICENSEE and sold by the LICENSEE either as separate units or as parts of devices, during the subject accounting period. The statement shall show in itemized form the total number and the total selling price (after deductions set forth in Section III below), of all such apparatus sold by the LICENSEE.

### III. Royalties

Simultaneously with the rendition of the said statement, the LICENSEE shall pay to the LICENSOR, in accordance with the statement so rendered, royalties, computed separately for each apparatus, at the rate of seven and one-half (7-1/2%) per cent of the net selling price of each apparatus, after deduction of credits for returns, transportation charges, discounts, allowances and taxes or other Governmental charges absorbed by the seller.

LICENSOR shall be entitled to only one royalty in respect of any apparatus regardless of the number of inventions that may be embodied in it that may be used in its manufacture or that it may be capable of practicing.

14. Release and Payment of Paid-Up Royalty

Upon the execution of this agreement, the LICENSEE has paid to the LICENSOR the sum of Two Thousand Five Hundred Dollars (\$2,500.00), by a certified check, as a paid-up royalty and settlement in full for all apparatus embodying and/or practicing said inventions made, made for it, used or sold by LICENSEE prior to the date of this agreement. The Licensor, in regard to all such apparatus made, made for it, used or sold by LICENSEE prior to the date of this agreement, hereby releases LICENSEE and its customers, suppliers, employees and all other persons from any claim under the Licensed Patent.

The LICENSOR and LICENSEE agree to sign and file a stipulation in their pending litigations entitled, Packaging Industries Limited, Inc. v. Diematic Manufacturing Corp., 65 Civ. 2007, United States District Court for the Southern District of New York, and Packaging Industries Limited, Inc. vs. Diematic Manufacturing Corp. and Alvin Reinecke, Supreme Court of the State of New York, New York County, in accordance with the annexed Appendix A and Appendix B, thereby dismissing those actions and the counter-claims therein with



prejudice. In addition, at the same time as this agreement is executed, LICENSOR shall sign the "General Release" set forth in Appendix C and the "Covenant Not to Sue", set forth in Appendix D, both as annexed hereto. The "Individual Admission of Validity of Patents", set forth in Appendix E annexed hereto shall also be signed at the same time as this agreement is executed.

V. Admission of Validity of Patent

The LICENSEE admits the validity of the Licensed Patent and agrees not to contest the same directly or indirectly.

VI. Sale of Business

The License hereby granted shall be non-exclusive, non-divisible and non-assignable except that LICENSEE may assign this License in connection with the sale or transfer of its entire assets and business.

VII. Arbitration and Applicable Law

Questions of interpretation, enforcement and all

disputes between the parties arising from this agreement shall be submitted to arbitration in New York City under the rules and auspices of the American Arbitration Association. This agreement shall be deemed to have been executed in New York and the parties hereto agree that the law of New York shall apply.

VIII. Notices

Any notice required to be given by either party to the other under this Agreement, unless otherwise specified, shall be considered to have been given if and when properly deposited for sending by registered or certified mail, prepared and properly addressed, in case of notices to LICENSOR, directed to:

PACKAGING INDUSTRIES, INC.  
Post Office Box 457  
Hyannis, Mass. 02602

or at such other address as LICENSOR may hereafter advise LICENSEE in writing; and in the case of notices to LICENSEE, directed to the attention of:

DIEMATIC MANUFACTURING CORP.  
220 West 19th Street  
New York, New York

or at such other address as LICENSEE may hereafter advise LICENSOR in writing.



ONLY COPY AVAILABLE

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IN WITNESS WHEREOF, the LICENSOR and the LICENSEE  
have executed this Agreement on the day and year written  
below.

PACKAGING INDUSTRIES, INC.

By \_\_\_\_\_

Date \_\_\_\_\_

DIEMATIC MANUFACTURING CORP.

By \_\_\_\_\_

Date \_\_\_\_\_

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ATTACHMENT I

MILLER & SUMMIT  
90 BROAD STREET  
NEW YORK, N. Y. 10004

WHITEHALL 3-8085

CABLE ADDRESS "MILLSUMM"  
TELEX NO 128155 MILLSUM NYK

March 21, 1974

American Arbitration Association  
140 West 51st Street  
New York, New York

Attention: Commercial Arbitration Tribunal

Re: Packaging Industries, Inc., petitioner  
v. Diematic Manufacturing Corp.,  
respondent/Commercial Arbitration

Dear Sirs:

Enclosed herewith are two copies of a demand for arbitration pursuant to Section 7 of the Commercial Arbitration Rules of this association. As is noted in the demand, the arbitration being commenced by Packaging Industries, Inc. whom we represent, is pursuant to a contractual clause that provides for arbitration under the Rules and auspices of this association.

The original of the demand for arbitration and a copy of this letter is simultaneously being served upon respondent, Diematic Manufacturing Corp., at its last known address by certified mail, return receipt requested.

Also enclosed herewith is a check in the amount of \$200 pursuant to your Administrative Fee Schedule. As the relief sought is for an amount not known to the claimant, but which can only be deduced from an accounting of respondent's profits, and for a permanent injunction, the \$200 fee seems to be the appropriate one pursuant to your Fee Schedule.



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INLLER & SUMMIT

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American Arbitration Association

March 21, 1974

As the arbitration agreement between the parties does not include the appointment of a specific arbitrator, and does not provide for any other method of appointment, it is respectfully suggested that the procedure stated in Section 12 to your Commercial Arbitration Rules is the appropriate one. We therefore request that you immediately submit to each party an identical list of names chosen from the Panel.

We are pleased to once again make use of your facilities, procedures and personnel. We have found your staff to be most courteous in the past and look forward to working with them again.

Very truly yours,

Gerard A. Dupuis

GAD:mv

Encl.

cc: Diematic Manufacturing Corp.  
(certified mail, return receipt requested)

ONLY COPY AVAILABLE

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# American Arbitration Association

FOR USE  
IN  
NEW YORK  
STATE

## COMMERCIAL ARBITRATION RULES

## ATTACHMENT I

### DEMAND FOR ARBITRATION

DATE: March 20, 1974

TO: (Name) Diematic Manufacturing Corp.  
(of party upon whom the Demand is made)  
220 West 19th Street  
(Address) \_\_\_\_\_  
(City and State) New York, New York

Named claimant, a party to an arbitration agreement contained in a written contract,  
dated June 6, 1968, providing for arbitration, hereby  
demands arbitration thereunder.  
(attach arbitration clause or quote hereunder)

Arbitration clause reads as follows:

"Questions of interpretation, enforcement and all disputes between  
the parties arising from this agreement shall be submitted to arbitration  
in New York City under the rules and auspices of the American Arbitration  
Association."

#### NATURE OF DISPUTE:

See Exhibit A attached hereto

CLAIM OR RELIEF SOUGHT: (amount, if any)

See Exhibit B attached hereto



ONLY COPY AVAILABLE

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PLEASE TAKE FURTHER NOTICE, that unless within <sup>twenty</sup> ten days after service of this Notice of Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

HEARING LOCALE REQUESTED: New York, New York  
(City and State)

You are hereby notified that copies of our arbitration agreement and of this demand are being filed with the American Arbitration Association at its New York Regional Office, with the request that it commence the administration of the arbitration. Under Section 7 of the Commercial Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

Signed Miller & Summit  
(May be Signed by Attorney)

Name of Claimant Miller & Summit  
Packaging Industries, Inc.  
Address (to be used in connection with this case) c/o Miller & Summit  
90 Broad Street  
City and State New York, New York 10004  
Telephone (212) 943-8085

EXHIBIT A TO DEMAND FOR ARBITRATION  
BY PACKAGING INDUSTRIES, INC. AGAINST  
DIEMATIC MANUFACTURING CORP.

Nature of Dispute:

Packaging Industries, Inc. (hereinafter the "Claimant"), a Massachusetts corporation, is the owner of the United States Patent 3,170,275, issued on February 23, 1965 and entitled "means for heat sealing lids on blisters" (hereinafter the "patent"). Claimant is engaged in the business of manufacturing, using and selling trays and toolings for impulse sealing machinery pursuant to and covered by the patent.

Diematic Manufacturing Corp. (hereinafter the "Respondent") is a corporation also engaged in the business of manufacturing, using and selling trays and toolings for impulse sealing machinery.

On or about June 6, 1968, Claimant and Respondent entered into an agreement (hereinafter the "Agreement") whereby Claimant granted to Respondent a non-exclusive license to make, use and sell trays, embodying and/or practicing one or more of the inventions claimed by patent. A copy of the Agreement is annexed hereto as Exhibit C.

The Agreement specifically provided that the non-exclusive license was limited to a nine month period from the date of the Agreement and was to terminate at the end of that period - March 6, 1969.



In addition, paragraph V of the Agreement states that Respondent admits the validity of the patent and agrees not to contest the patent directly or indirectly.

Subsequent to March 6, 1969, the end of the non-exclusive license period, and continuing to this date, Respondent has manufactured, used and sold trays covered by the patent and therefore has infringed and is infringing upon the patent owned by Claimant and has breached the Agreement.

Claimant does not at this time know and does not have any way of ascertaining the extent of its damages suffered by reason of Respondent's infringement of Claimant's patent and Respondent's breach of the Agreement.

EXHIBIT B TO DEMAND FOR ARBITRATION  
BY PACKAGING INDUSTRIES, INC. AGAINST  
DIEMATIC MANUFACTURING CORP.

Relief Sought:

Claimant seeks the following relief herein:

1. A full and accurate accounting of all revenues in any way attributable to Respondent's infringement upon Claimant's patent by the manufacture, use and sale of trays, embodying and/or practicing one or more of the inventions claimed by the patent and payment to Claimant of all such revenues so derived.

2. A permanent injunction whereby Respondent will be prohibited from infringing upon Claimant's patent.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application and Motion For Stay of Arbitration, along with accompanying documents, has been served upon Miller & Summit, 90 Broad Street, New York, New York 10004, attorneys for defendant Packaging Industries, Inc., by depositing a copy of same in the United States mails, postage prepaid, this 5th day of April, 1974.

---

Eliot S. Gerber

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

DIEMATIC MANUFACTURING CORP., :

Plaintiff, :

74 Civ 1557 (LFM)

-against-

: NOTICE OF CROSS MOTION  
FOR STAY

PACKAGING INDUSTRIES, INC., :

Defendant. :

----- x

S I R S :

PLEASE TAKE NOTICE, that the undersigned will move this Court, Judge Lloyd F. MacMahon, United States District Court for the Southern District of New York, Foley Square, New York, New York, on the 19th day of April, 1974 at 2:15 o'clock in the afternoon of that day or as soon thereafter as counsel can be heard for an order staying the prosecution of this action pending the determination by the arbitrator in an arbitration before the American Arbitration Association entitled "In the Matter of the Arbitration between Packaging Industries, Inc., and Diematic Manufacturing Corp." commenced pursuant to defendant's demand for arbitration dated March 20, 1974, and for such other relief as this Court may seem just in the



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premises.

Dated: New York, New York  
April 18, 1974

TO: Wyatt, Gerber & Shoup  
Attorneys for Plaintiff  
230 Park Avenue  
New York, N.Y. 10017

MILLER & SUMMIT  
Attorneys for Defendant  
90 Broad Street  
New York, New York 10004  
(212) 943-8085

By: *James H. Miller*  
A Member of the Firm

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

DIEMATIC MANUFACTURING CORP.,

Plaintiff,

Civil Action  
No. 74 Civ. 1557  
(L.F.M.)

-against-

PACKAGING INDUSTRIES, INC.,

Defendant.

-----x

AFFIDAVIT IN SUPPORT OF THE  
DEFENDANT'S CROSS MOTION  
FOR STAY

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss:

Gerard A. Dupuis, being duly sworn, deposes and  
says:

1. I am a member of the firm of Miller & Summit,  
duly admitted to practice before this Court, and am  
counsel to defendant in the referenced action. I am  
fully familiar with the facts in this case as well as  
the preceding arbitration instituted by Packaging Industries,  
Inc. ("PI") against plaintiff Diematic Manufacturing  
Corp. ("Diematic") on March 20, 1974. I submit this  
affidavit in support of PI's cross motion seeking a  
stay of the prosecution of the instant action by Diematic  
pending a determination of the pre-existing arbitration  
proceeding validly instituted by PI against Diematic.

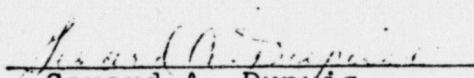


2. As can be seen by PI's papers submitted in opposition to plaintiff's motion seeking a stay of the arbitration proceeding, it is PI who is entitled to a stay of the instant action while the proper forum proceeds to determine the dispute between the parties arising out of the License Agreement between them dated June 6, 1968.


3. By virtue of the fact that Diematic's counsel did not see fit to append plaintiff's complaint to its motion papers, seeking a stay, PI has not had sufficient opportunity to completely review the allegations made in the complaint. However, a quick review was sufficient to reveal that the complaint has no real merit and that the antitrust causes of action were asserted in an effort to bestow upon this Court an appearance of exclusive jurisdiction. The only real dispute between these parties arises out of the License Agreement and pertains to whether or not Diematic has, contrary to the terms of the License Agreement, continued to manufacture and sell the products which it was licensed to profit from in the License Agreement. The License Agreement provides for resolution of this dispute by the exclusive means of arbitration and Diematic desperately wishes to circumvent that salutary means of resolving differences.

4. Quite clearly the alleged antitrust causes of action are based exclusively upon the asserted invalidity of PI's patent as to which Diematic had been granted a license on June 6, 1968. However, in that same License Agreement Diematic specifically recognized and admitted the validity of PI's patent and agreed not to contest it directly or indirectly. The instant action is a repudiation of Diematic's obligation under the License Agreement and is an effort to undertake protracted litigation in a dispute that is simple of resolution in the arbitration forum. It is urged that this Court not countenance the admitted enlistment of the Court's aid in Diematic's refutation of its contractual obligation and agreement to arbitrate disputes.

WHEREFORE, for the foregoing reasons it is strongly urged that the cross motion be granted and that the prosecution of the within action be stayed until after final determination in the pre-existing arbitration proceeding.

  
Gerard A. Dupuis

Sworn to before me this  
18th day of April, 1974

  
Notary Public



Sworn to before me this  
19th day of April, 1974.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

DIEMATIC MANUFACTURING CORP., : 74 Civ. 1557  
Plaintiff, : (Judge Mac Mahon)  
-against- :  
PACKAGING INDUSTRIES, INC., :  
Defendant. :

----- x

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK)

EDWARD HUSVAR, JR., being duly sworn, deposes  
and says:

1. Since 1966 I have been a full-time employee of defendant Packaging Industries, Inc. ("PI") and currently perform services as National Sales Manager. As a result I have complete knowledge of the products being manufactured and sold by PI. In particular, I am familiar with the manufacture and sale by PI of trays for heat-sealing used in conjunction with impulse heat-sealing machines (also manufactured and sold by PI) in the blister packaging business.

2. I am also familiar with the facts which led to the institution, on March 20, 1974, of an arbitration proceeding, before the American Arbitration Association, by PI against plaintiff herein, Diematic Manufacturing Corp. ("Diematic").



I submit this affidavit in opposition to the motion by Diematic to stay the said arbitration proceeding.

3. In or about March 1974 I discovered that several of PI's regular customers were employing a heat-sealing tray not manufactured by PI for its blister packaging machine which tray was in fact identical in every relevant material respect, to those being manufactured by PI. I am also familiar with a license agreement between PI and Diematic dated June 6, 1968 (hereinafter "License Agreement" an executed copy of which is appended hereto as Exhibit A), pursuant to which Diematic was licensed to manufacture and sell the heat-sealing trays covered by PI's U.S. patent # 3,170,275.

4. I inquired of PI's customers employing this tray from whom it had been purchased, making no other representations, and was informed that it had been purchased from Diematic. Thereafter, I participated in discussions which lead to the institution of the arbitration proceeding which Diematic presently seeks to stay. The arbitration proceeding is based upon the License Agreement between PI and Diematic which, inter alia, granted Diematic a license to manufacture and sell the trays covered under PI's patent #3,170,275 which License Agreement also provides that any dispute arising or concerning the subject of the License Agreement shall be resolved by arbitration.

5. It must be made clear at the outset that PI makes no claim in the arbitration that U.S. patent #3,699,305, previously issued to Diematic, is invalid or in any way infringes upon PI's patent #3,170,275 and as to which latter patent the license was granted. However, PI is asserting in the arbitration proceeding that Diematic has manufactured and sold trays covered by the License Agreement beyond the license period and continues to do so to date. Indeed, it would appear that Diematic has continued to manufacture and sell trays covered by the License Agreement beyond its expiration date and placing patent #3,699,305 identification plates on those trays to which that patent does not pertain.

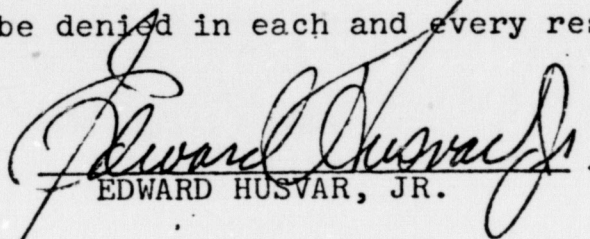
6. PI does not wish to prevent Diematic from manufacturing, selling or otherwise engaging in the business of profiting from the use of trays conforming to its patent #3,699,305, but merely demands that Diematic refrain from manufacturing and selling trays covered by the License Agreement and/or bearing U.S. patent #3,170,275 which Diematic was previously licensed to manufacture and sell. Moreover, PI seeks an accounting from Diematic for all profits unlawfully derived from the complained of activities since the end of the license period.

7. Thus, it can be seen that patent validity is not

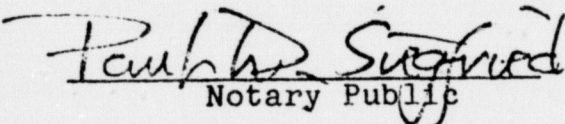


an issue in the arbitration instituted by PI as no question is raised therein concerning the validity of either patent #3,170,275 issued to PI or patent #3,699,305 issued to Diematic.

WHEREFORE, it is respectfully requested that Diematic's motion seeking a stay of the arbitration proceeding properly instituted by PI be denied in each and every respect.

  
EDWARD HUSVAR, JR.

Sworn to before me this  
18th day of April, 1974

  
Notary Public

PAID  
Notary Public  
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This agreement is effective as of the 6th day of June, 1968, by and between Packaging Industries, Inc. of Off Airport Road, Hyannis, Massachusetts (previously Packaging Industries Limited, Inc.) hereinafter referred to as "LICENSOR", and Diematic Manufacturing Corp., of 220 West 19th Street, New York, New York, hereinafter referred to as "LICENSEE".

1. License Grant

LICENSOR represents and warrants that it is the owner of the United States Patent 3,170,275, issued February 23, 1965, and entitled "Means For Heat Sealing Lids on Blisters", hereinafter referred to as "Licensed Patent", and that it has the right to grant licenses under said patent. The LICENSOR hereby grants to the LICENSEE under the Licensed Patent a non-exclusive license without any right to grant sub-licenses, to make, use, and sell, for the term of <sup>nine</sup>(9) months, trays, embodying and/or for practicing one or more of the inventions claimed by the Licensed Patent relating to trays and to have repair and replace-



ment parts made for such trays for said LICENSEE. This license is for a nine-month period from the date hereof and shall terminate at the end of the said nine-month period. However the royalty period, under Para. III, shall commence as of July 1, 1968.

## II. Records and Accounting Periods

The LICENSEE shall keep accurate records at its regular place of business, showing its transactions in apparatus embodying and/or for practicing said inventions in sufficient detail to enable the royalties hereinafter mentioned readily to be ascertained; and such pertinent record shall be open to inspection during usual business hours, for verification of accounting reports hereinafter mentioned, by any certified public accountant of the LICENSOR acceptable to the LICENSEE and at LICENSOR's expense. The LICENSEE shall not unreasonably withhold its acceptance. The hereinafter mentioned royalties shall be paid by the LICENSEE at the termination of the said nine-month period. Royalty payments and an accounting for the said period will be due and payable thirty (30) days after the close of the said nine-

month period. Such accounting shall include an accurate statement by the LICENSEE of all apparatus embodying and/or for practicing the said inventions manufactured by the LICENSEE and sold by the LICENSEE either as separate units or as parts of devices, during the subject accounting period. The statement shall show in itemized form the total number and the total selling price (after deductions set forth in Section III below), of all such apparatus sold by the LICENSEE.

### III. Royalties

Simultaneously with the rendition of the said statement, the LICENSEE shall pay to the LICENSOR, in accordance with the statement so rendered, royalties, computed separately for each apparatus, at the rate of seven and one-half (7-1/2%) per cent of the net selling price of each apparatus, after deduction of credits for returns, transportation charges, discounts, allowances and taxes or other Governmental charges absorbed by the seller.

LICENSOR shall be entitled to only one royalty in respect of any apparatus regardless of the number of inventions that may be embodied in it that may be used in its manufacture or that it may be capable of practicing.



14. Release and Payment of Paid-Up Royalty

Upon the execution of this agreement, the LICENSEE has paid to the LICENSOR the sum of Two Thousand Five Hundred Dollars (\$2,500.00), by a certified check, as a paid up royalty and settlement in full for all apparatus embodying and/or practicing said inventions made, made for it, used or sold by LICENSEE prior to the date of this agreement. The Licensor, in regard to all such apparatus made, made for it, used or sold by LICENSEE prior to the date of this agreement, hereby releases LICENSEE and its customers, suppliers, employees and all other persons from any claim under the Licensed Patent.

The LICENSOR and LICENSEE agree to sign and file a stipulation in their pending litigations entitled, Packaging Industries Limited, Inc. v. Diematic Manufacturing Corp., 65 Civ. 2007, United States District Court for the Southern District of New York, and Packaging Industries Limited, Inc. vs. Diematic Manufacturing Corp. and Alvin Reinecke, Supreme Court of the State of New York, New York County, in accordance with the annexed Appendix A and Appendix B, thereby dismissing those actions and the counter-claims therein with

prejudice. In addition, at the same time as this agreement is executed, LICENSOR shall sign the "General Release" set forth in Appendix C and the "Covenant Not to Sue", set forth in Appendix D, both as annexed hereto. The "Individual Admission of Validity of Patents", set forth in Appendix E annexed hereto shall also be signed at the same time as this agreement is executed.

V. Admission of Validity of Patent

The LICENSEE admits the validity of the Licensed Patent and agrees not to contest the same directly or indirectly.

VI. Sale of Business

The License hereby granted shall be non-exclusive, non-divisible and non-assignable except that LICENSEE may assign this License in connection with the sale or transfer of its entire assets and business.

VII. Arbitration and Applicable Law

Questions of interpretation, enforcement and all disputes between the parties arising from this agreement



shall be submitted to arbitration in New York City under the rules and auspices of the American Arbitration Association. This agreement shall be deemed to have been executed in New York and the parties hereto agree that the law of New York shall apply.

VIII. Notices

Any notice required to be given by either party to the other under this Agreement, unless otherwise specified, shall be considered to have been given if and when properly deposited for sending by registered or certified mail, prepared and properly addressed, in case of notices to LICENSOR, directed to:

PACKAGING INDUSTRIES, INC.  
Post Office Box 457  
Hyannis, Mass. 02602

or at such other address as LICENSOR may hereafter advise LICENSEE in writing; and in the case of notices to LICENSEE, directed to the attention of:

DIEMATIC MANUFACTURING CORP.  
220 West 19th Street  
New York, New York

or at such other address as LICENSEE may hereafter advise LICENSOR in writing.

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IN WITNESS WHEREOF, the LICENSOR and the LICENSEE  
have executed this Agreement on the day and year written  
below.

PACKAGING INDUSTRIES, INC.

By *[Signature]*

Date JULY 6, 1968

DIEMATIC MANUFACTURING CORP.

By *[Signature]*

Date JULY 2, 1968



APPENDIX A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

Packaging Industries Limited, Inc.,	:	
	:	
Plaintiff	:	
- v -	:	65 Civ. 2007
	:	Cal. #430(4)
Diematic Manufacturing Corp.,	:	
	:	
Defendant	:	

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STIPULATION OF DISMISSAL

The parties hereto stipulate that this case and the counterclaims are and shall be dismissed with prejudice, as to all parties, as of this 5<sup>th</sup> day of JULY, 1968

DIEMATIC MANUFACTURING CORP.

By

*S. Gerber*

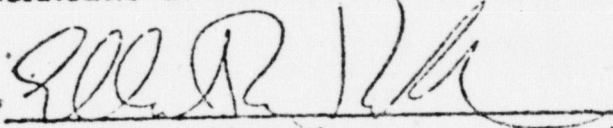
Its attorney  
Eliot S. Gerber  
310 Madison Avenue  
New York, N. Y. 10017  
Telephone 697-5888

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PACKAGING INDUSTRIES LIMITED, INC.

By



Its attorney

Elliot Ira Miller

90 Broad Street

New York, N. Y. 10004

Telephone 943-6040

SO ORDERED

United States District Judge



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ONLY COPY AVAILABLE

APPENDIX B

SUPREME COURT  
COUNTY OF NEW YORK

----- X

PACKAGING INDUSTRIES LIMITED, INC., : Index No. 30861/  
1966

Plaintiff :

-against-

: STIPULATION  
: DISCONTINUING  
: ACTION

DIEMATIC MANUFACTURING CORP. and :  
ALVIN REINECKE :

Defendants

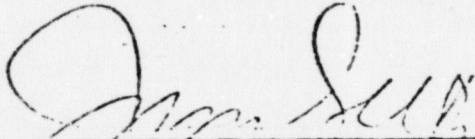
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IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action, and the counterclaims, are, and the same hereby are discontinued, without costs to either party as against the other and with prejudice. This stipulation may be filed without further notice with the Clerk of the Court.

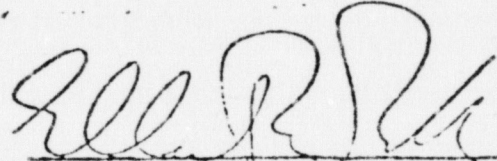
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Dated: JULY 5, 1968



JASON SELTZER  
Attorney for Defendant



ELLIOT IRA MILLER  
Attorney for Plaintiff



## APPENDIX C

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,  
GREETING: KNOW YE, That PACKAGING INDUSTRIES, INC. (PACKAGING INDUSTRIES LIMITED, INC.) a corporation, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States of America to it in hand paid by Diematic Manufacturing Corp., Alvin Reinecke, Raymond Rozman, David Bagoff, Anthony Griffio, Mitchell Lacher and Frank Carnegie, Jr., the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said Diematic Manufacturing Corp., Alvin Reinecke, Raymond Rozman, David Bagoff, Anthony Griffio, Mitchell Lacher and Frank Carnegie, Jr., their heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, execu-

tions, claims and demands whatsoever, in law, in admiralty, or in equity, which against Diematic Manufacturing Corp., Alvin Reinecke, Raymond Rozman, David Bagoff, Anthony Griffo, Mitchell Lacher and Frank Carnegie, Jr. it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents. .

This release may not be changed orally.



## APPENDIX D

COVENANT NOT TO SUE

PACKAGING INDUSTRIES LIMITED, INC., hereby covenants that it will not now, or in the future, sue DIEMATIC MANUFACTURING CORP., or its suppliers or customers, under United States Patent 3,170,275, issued February 23, 1965, and entitled "Means for Heat Sealing Lids on Blisters", in regard to the apparatus, listed below, made, made for, sold or used by DIEMATIC MANUFACTURING CORP. The said apparatus is: (i) trays for heat sealing which are formed by an etching process and which do not utilize an electrode positioned between two sheets of non-sticking material; or (ii) a machine for heat-sealing lids on blisters, which machine utilizes a closed loop heat control system employing a heat sensitive transducer, such as a thermistor, and which machine does not utilize a plurality of contacts having predetermined locations with each contact supplying a predetermined voltage differing from the voltage supplied by the others of said contacts, a prototype of the said machine having been shown at the A.M.A. Packaging Show at the New

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York Coliseum in May, 1968 or (iii) trays for heat sealing, of whatever description, which are built or rebuilt to incorporate a heat control for use in a machine as described in (ii) above.

PACKAGING INDUSTRIES INC.  
By: John D. Benson Vice Pres.

IN WITNESS WHEREOF, the said PACKAGING INDUSTRIES, INC., (PACKAGING INDUSTRIES LIMITED, INC.) has caused its corporate seal to be hereunto affixed and these presents be signed by its duly authorized officer on the 6<sup>th</sup> day of JULY 1968

(Corporate Seal)

PACKAGING INDUSTRIES INC.

By

John D. Benson Vice Pres.



STATE OF Massachusetts COUNTY OF Barnstable ss.:

On the 6th day of July 1969  
before me personally came John D. Bambara

to me known, who, being by me duly sworn, did depose and say that he resides at No. Munnska Road.

Gapponeau Beach, Mass.  
that he is the Vice President of Packaging Industries the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation; and that he signed his name thereto by like order.

Jeremiah P. Archard  
Notary Public

My Commission Expires:  
March 23rd, 1973

STATE OF NEW YORK       )  
                              )  
COUNTY OF NEW YORK     ) ss.:

ROBERT C. NOONAN, being duly sworn,  
deposes and says that he served the within AFFIDAVIT OF  
EDWARD HUSVAR, Jr., IN OPPOSITION TO PLAINTIFF'S MOTION  
FOR STAY upon Wyatt, Gerber & Shoup, the attorneys for  
plaintiff herein, on April 18, 1974, at their offices  
at 230 Park Avenue, New York, New York 10017.

Robert C. Noonan  
ROBERT C. NOONAN

Sworn to before me this  
19th day of April, 1974.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DIEMATIC MANUFACTURING CORP.,	:	74 Civ. 1557
Plaintiff,	:	(Judge Mac Mahon)
-against-	:	
	:	<u>NOTICE OF MOTION</u>
PACKAGING INDUSTRIES, INC.,	:	
Defendant.	:	

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S I R S :

PLEASE TAKE NOTICE, that, upon the annexed affidavit of John Bambara, sworn to April 30, 1974, the undersigned will move this Court, Judge Lloyd F. MacMahon, United States District Court for the Southern District of New York, Foley Square, New York, New York, on the 10th day of May, 1974 at 2:15 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order dismissing the complaint herein pursuant to Rule 12(b)1 and 6 of the Federal Rules of Civil Procedure upon the grounds that the complaint herein was filed in defense of an Arbitration Proceeding previously instituted and upon other grounds herein stated, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York  
May 3, 1974

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MILLER & SUMMIT  
Attorneys for Defendant  
90 Broad Street  
New York, New York 10004  
(212) 943-8085

BY: \_\_\_\_\_

A Member of the Firm

TO: Wyatt, Gerber & Shoup  
Attorneys for Plaintiff  
230 Park Avenue  
New York, New York 10017



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

DIEMATIC MANUFACTURING CORP., :

74 Civ. 1557

Plaintiff, :

(JUDGE MacMAHON)

-against- :

PACKAGING INDUSTRIES, INC., :

AFFIDAVIT IN SUPPORT  
OF DEFENDANT'S MOTION  
TO DISMISS PLAINTIFF'S  
COMPLAINT

Defendant. :

- - - - - x

STATE OF MASSACUSETTTS)

: SS.:

COUNTY OF BARNSTABLE )

JOHN BAMBARA, being duly sworn, deposes and says:

1. I am the president and chief executive officer of defendant Packaging Industries, Inc. ("PI") and being fully familiar with all the facts of this action and those in the previously instituted arbitration proceeding between the same parties, I submit this affidavit in support of PI's motion to dismiss the complaint of plaintiff Diematic Manufacturing Corp. ("Diematic").

2. Diematic's complaint should be dismissed because it asserts two causes of action, which, while on their surface appear to raise federal questions are merely a transparent and

rather usual effort to invoke exclusive federal question jurisdiction thereby seeking to evade a properly instituted prior arbitration proceeding. The commencement of this federal action is Diematic's defensive tactic made out of desperation at the thought of having to defend the arbitration claims.

3. The current controversy between these parties had its inception long before now. The controversy has its basis in a patented process entitled "Means for Heat Sealing Lids on Blisters" for which process ("Blister Packaging") both parties hold a U. S. Patent which permit achieving similar results but by very important differences in process methods and equipment. The process and equipment involved are, simply stated, a means of packaging relatively small consumer goods for point-of-purchase displays which products may be clearly seen through the rigid plastic surface that has been "baked" over the product and made to adhere to a sturdy backing material. This packaging is achieved by the use of "heat sealing trays" and a "heat sealing machine". The trays, manufactured by PI, are custom cut to receive usually several of the products to be packaged. In turn, the trays, with product in place, are passed through the "heat sealing machine", also manufactured by PI, at which point the clear plastic packaging material is heated and placed over each item in the tray. The tray remains in the "heat sealer" for a predetermined time sufficient to melt the plastic around the



product. Thereafter, the tray is allowed to cool, the packaged goods are removed and the tray is re-used for the same process.

4. This packaging process and its associated hardware (heat sealing tray and machine) are the subject of PI's U.S. Patent No. 3,170,275 (Exhibit A hereto) issued to Mr. Howard A. Rohdin in 1965 and subsequently assigned to PI. A competing heat sealing tray was designed by or for Diematic and U. S. Letters Patent No. 3,617,696 were issued thereon to John E. Reinstra in 1971 (Exhibit B hereto). However, prior to the issuance of Diematic's patent, and in 1965, PI instituted an infringement action, in this Court, against Diematic entitled "Packaging Industries Limited, Inc. v. Diematic Manufacturing Corp." (S.D.N.Y., No. 65 Civ. 2007). PI, at or about the same time, instituted an action against Diematic in Supreme Court, New York County. Both of these prior actions by PI sought to protect its patented process and equipment from being unlawfully appropriated by Diematic. This prior litigation, lasting over 3 years, resulted in settlement pursuant to the terms of a license agreement dated June 8, 1968 (Exhibit C hereto "License Agreement").

5. Among other things, the license agreement provided a) for the termination of the action by the filing of stipulations of dismissal with prejudice; b) for the grant to

Diematic of a non-exclusive license "to make, use and sell, for the term of nine (9) months, trays, embodying and/or for practicing one or more of the inventions claimed by the Licensed Patent relating to trays and to have repair and replacement parts made for such trays for said Licensee." (LA ¶1\*); c) for royalty payments; d) that the rights granted in LA ¶1 ("to make, use, and sell, etc.") were to terminate on March 9, 1969; e) that Diematic "admit[ted] the validity of [PI's] Licensed Patent and agree[d] not to contest the same directly or indirectly." (LA ¶V); f) that "Questions of interpretation, enforcement and all disputes between the parties arising from this agreement shall be submitted to arbitration in New York City under the rules and auspices of the American Arbitration Association." (LA ¶VII); g) that PI should simultaneously execute a "covenant not to sue", appendix D to the License Agreement (LA ¶IV). These then, were the essential terms bargained for in settlement of the prior litigation between these parties.

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\*References "LA" are to the June 8, 1968 License Agreement.



6. It is of particular significance that this Court be aware of the fact that at the time of executing the License Agreement (June 8, 1968) Diematic represented that it was then in the process of applying for a Patent to cover its version of a "heat sealing tray" for which Patent No. 3,617,696 was subsequently granted in 1971. In fact the application was filed on May 3, 1968 (See Exhibit B). This fact is important because the Covenant Not to Sue, heavily relied on by Diematic herein in support of its argument against arbitration, was cast in terms of Diematic's new process as to which it was seeking a Patent. The Covenant could not make reference to other than a process because Diematic yet had no patent on it. Thus, the Covenant quite logically states that PI will not sue Diematic under PI's patent No. 3,170,275 if Diematic produces trays pursuant to Diematic's process then under patent application. Thus, as far as these parties were concerned, they could both proceed to manufacture and sell trays pursuant to their respective patent descriptions with the safety against litigation afforded by the terms of the License agreement and its associated documents.

7. Thus, the pleadings in this action make it very clear that the Covenant Not to Sue has no application to this litigation or to the arbitration proceeding previously instituted.

The only issue in dispute in the arbitration is whether or not Diematic has, since March 6, 1969\*, continued "to make use and sell" the trays covered by PI's Patent No. 3,170,275 which it has had no right to do since March 6, 1969. The issue is not whether Diematic's patented trays under Patent No. 3,617,696 are an infringement or other violation of PI's patented rights. Indeed, Diematic focuses upon the real issue in this case, in its complaint, when it asserts:

"Plaintiff's [Diematic] trays, made at least since March 6, 1969, are licensed under Patent No. 3,170,275 by virtue of a "Covenant Not to Sue" signed by defendant." (Complaint, ¶21).

8. Complaint ¶21 is a clear assertion by Diematic that 1) it continues to be "licensed" to manufacture and sell trays covered by PI's patent; 2) it has, in fact, made trays since "at least March 6, 1969 ... under [PI's] Patent No. 3,170,275" although its rights to do so terminated March 6, 1969; 3) it considers the license agreement in force only to the extent that Diematic is protected from suit, even if it manufactures and sells PI's patented trays and pays no royalties.

\*The expiration of the licensed right to "sell, use, etc." in LA ¶1.

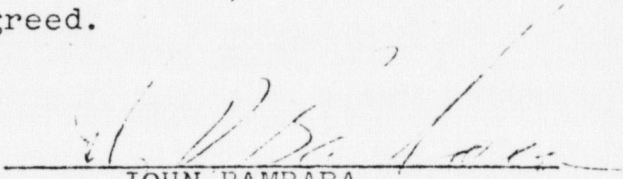


Curiously, although the Covenant Not to Sue protects Diematic if it manufactures and sells trays under its own patent, nowhere in its papers in this action does Diematic make any reference to its own patent nor does it assert that its trays are produced under its own patent. To the contrary, Diematic asserts that it is manufacturing trays under PI's patent (Complaint, ¶21) and that it may do so with impunity because it is protected by the License Agreement, which agreement is expired. Diematic argues, when its terms, particularly the arbitration clause, are sought to be implemented by PI!

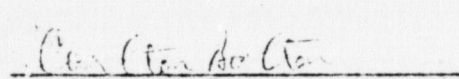
9. Apart from Diematic's inconsistent interpretation of the License Agreement it is evident that its primary purpose in starting the instant litigation is to prevent the arbitration proceeding from continuing. It is plain that the License Agreement gave Diematic the right to sell and manufacture trays pursuant to PI's patent No. 3,170,275 only until March 6, 1969 - not thereafter as asserted in Diematic's complaint. PI instituted the arbitration proceeding in March 1974 (Exhibit D hereto) because Diematic has continued to operate as though licensed to profit without cost from PI's patent which Diematic admits, and PI has used the arbitration procedure because that is the exclusive means of resolving any disputes between these parties as provided in the License Agreement.

10. I am advised by counsel that Diematic may raise any defense it may have to PI's claims within the arbitration

proceeding, and that Federal Courts will not permit the assertion of would-be "federal question claims" as a defensive tactic for the sole purpose of preventing the arbitration of disputes. It is respectfully requested that this principle, having sure application here, be applied and the parties proceed to arbitration as they previously agreed.

  
JOHN BAMBARA

Sworn to before me this  
30 day of April, 1974.

  
Notary Public

My Commission Expires May 21, 1976

EXHIBIT A

See opposite page



## United States Patent Office

3,170,275

Patented Feb. 23, 1965

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3,170,275

## MEANS FOR HEAT SEALING LIDS ON BLISTERS

Howard A. Rohdin, 397 Forest Ave., and Adolph A. Rohdin, 385 Forest Ave., both of Glen Ridge, N.J.

Filed Sept. 12, 1963, Ser. No. 163,502

12 Claims. (Cl. 53-373)

It is an object of this invention to provide a method and apparatus for heat sealing lids onto preformed containers or blisters formed in a web of plastic. While it is perfectly possible to use this method and apparatus on a single web containing a plurality of such containers, the description will deal with individual blisters, since this is the more usual practice. It is not intended, therefore, to confine this invention to the sealing of individual (as distinct from web connected) blisters.

It is a further object of this invention to provide a method and apparatus as aforesaid in which the apparatus can be changed from one type of container to another differing in size, shape, caliber and kind of material with minimum down time and with a minimum requirement of selective judgement on the part of the person making the change.

It is a further object of this invention to provide in an apparatus aforesaid, heat sealing electrodes which will apply heat uniformly around the periphery of blisters of almost any peripheral outline.

The above and other objects will be made clear from the following detailed description taken in connection with the annexed drawings in which:

FIGURE 1 is a front elevation of the apparatus;

FIGURE 2 is a plan view of the apparatus;

FIGURE 3 is a partial sectional view of the central heating and pressing part of the apparatus taken on the line 3-3 of FIGURE 2;

FIGURE 4 is a plan view of one of the heating electrodes;

FIGURES 4A and 4B illustrate other electrodes in forms that have been successfully used;

FIGURE 4C is a special electrode for non-hermetic sealing;

FIGURE 5 is a section through one of the blister carrying trays showing how the electrode is secured in place;

FIGURE 6 is a schematic diagram illustrating a preferred and two alternative layers for the machine adapted to heat sealing from the top;

FIGURE 7 is a view in partial section of a preferred form of machine for top sealing;

FIGURE 8 is a section on the line 8-8 of FIGURE 7;

FIGURE 9 is a schematic elevation of one form of sealing member and tray in loading position;

FIGURE 9A shows the parts of FIGURE 9 in sealing position;

FIGURE 10 shows an alternative to FIGURE 9 with the parts in loading position;

FIGURE 11 shows a further alternative to FIGURE 9 with the parts in loading position; and

FIGURE 12 is a preferred wiring diagram of the apparatus.

When a machine is stopped for adjustment to a different product, every element of cost, e.g., labor, depreciation, etc., goes on exactly as though the machine were running productively. These shut-down costs must be added to the cost of the articles actually produced, and when the nature of the products is such that frequent stoppages for adjustment are required, such shut-down costs form a serious proportion of the total cost of the finished product.

It is also desirable that the adjustment require a

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minimum of judgment or know-how on the part of the operator. Mistakes create waste which adds to total costs, and potential mistakes are minimized as the field within which selective judgement must be exercised is restricted. Moreover, no matter how much the adjustment is simplified, a more expensive type of labor is required to make adjustments than is required merely to supply the machine and to remove the product.

The present invention minimizes shut-down time as well as the exercise of judgement by employing a plurality of trays, each having a plurality of openings therethrough, each of said openings being shaped to receive a particular form of blister. Each of the openings is surrounded by a heating electrode of the type shown in FIGURES 4, 4A and 4B which will be described hereinafter. The electrodes all are joined to a common return line which is connected to a contact mounted in the upper surface of the platen. This particular contact always has the same location, usually marginal, in the surface of the tray. The feed line of the several electrodes also goes to a marginal surface contact, but the location of the contact will vary from tray to tray. Mating contacts are provided in the pressure platen, a single contact for the return contacts of all the trays, and a plurality of contacts, though only one to a tray, at varying locations for the feed lines. On the "feed" side, depending on which of the contacts in the pressure platen is active a particular voltage will be applied selected especially for the blisters which the particular tray is designed to accommodate. Since the blister accommodating trays are merely resting in rolling contact with the machine as a whole, they can be removed and replaced easily and quickly and the replacing trays always will make contact with optimum voltage without necessity for the exercise of judgement on the part of the operator. Down time, therefore, is only a matter of seconds, and waste due to improper voltage application is avoided entirely.

It is, of course, perfectly possible to connect the heating elements of any tray to an appropriate voltage by means of "jacks" through a flexible conductor. Since both input and output would run through the flexible conductor, even the possibility of arcing through the platen to platen contacts hereinabove proposed would be avoided. A simple two wire jack would suffice in most cases where the same voltage would be applied to the several heating elements. If, however, different voltages were required for the several heating elements, multiple conductors would and could be used in a single flexible cable, and the need for selective judgement can be avoided by appropriate markings and/or mating lugs on the jacks and their respective sockets. The application of pressure and the energizing of the electrodes desirably are concomitants of the arrival of the tray in sealing position under the pressure unit. This will be brought out in detail in the discussion of FIGURE 12.

There are certain practical differences between the problem of sealing a cardboard lid to a blister type container, and sealing a plastic, impervious lid to the same type of container. Such differences are more manifest, however, in the machine than in the method which fundamentally, remains unchanged in either case. These differences, which are brought out in FIGURES 6-8, will be analyzed to afford a better understanding of the mechanical differentiation between the two operations which will be discussed in detail hereinafter.

In the first place, where the nature of the contents permits, there is almost universal preference for the cardboard lid as opposed to the impervious plastic lid. This is quite understandable. Cardboard, caliber for caliber, is stiffer than most thermoplastics and on the same basis

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is far less costly. It is highly printable as compared to most plastics, and where it is suitable at all, it permits more imperfection of the seal, in the hermetic sense, than most plastics. Rejects therefore are less and net production is greater. Being fibrous, the cardboard usually has less heat conductivity than most plastics and it is usually best, quickest, and most effective to direct the heat through the flange of the container to the interface between flange and lid rather than through the cardboard. In such case, there is negligible tendency for the cardboard to stick to the pressure die in contact therewith and no attention need be paid to this aspect of the operation.

When, on the other hand, an impervious plastic lid is used, and for perishables this is almost the universal case, the problems are quite different. The container or blister must be self sustaining in three dimensional form, whereas the lid presents only a plane surface with far less strength requirements than those of the container proper. The caliper of the lid is dictated by the requirements of imperviousness and not of strength, for which reason the caliper of the lid may be as little as 1/4 that of the container body. Where any such differential exists, it is manifestly desirable, in order to shorten the sealing cycle, to direct the heat through the lid to the interface between the lid and the flange of the container. This involves a reversal of the sealing conditions found optimum for the cardboard lid, and this in turn raises the problem of sticking between the lid and the pressure member, which member in this case also carries the heating elements or electrodes. To secure in this case all the benefit of the fundamental concept of this invention requires quite special mechanical adaptation as will appear hereinafter.

Referring now to FIGURES 1, 2 and 3, there is shown a machine generally designated 10 having a pair of guide rails 12 at one side and a pair of similar guide rails 14 at the opposite side of a pressure unit 16. A pair of blister receiving trays 18 and 20 are provided, each mounted on rollers 22 for rolling contact on the rails 12 and 14. As shown in FIGURE 1, the tray 18 has been rolled along the rails 12 until it is squarely under the pressure unit 16, while a tray 20 lies exposed on the rails 14. All of the trays have a plurality of blister receiving openings 24, as schematically illustrated in FIGURE 2. Each of the openings 24 is surrounded by a heating electrode 26. These electrodes are connected by lines 28 to a return line contact 30, which usually will have the same location on the surface of the tray, and to a feed contact 32 which may have any of several locations 32' on the platen. As will be noted in FIGURES 1 and 2, the tray 20, in the position shown, has no connection with the machine as a whole except the rolling contact between the rollers 22 and the rails 14. It may be removed and replaced by a tray having different openings 24 connected to a feed contact 32' to convey a different voltage especially suited to the blisters to be placed in the openings of the substituted tray. Such substitution is quick, easy and involves no releasing, fitting or adjustment.

As shown in FIGURE 1, while the tray 18 is being processed in the pressure unit 16, the tray 20 is exposed, enabling the operator at that side of the machine to remove the heat sealed product of the previous operation, and place new, filled blisters in the openings 24, and to apply covers or lids to the blisters. On completion of a cycle by the pressure unit 16, the operator at the opposite side of the machine withdraws tray 18 from unit 16 onto rails 12, and his fellow operator pushes tray 20 into unit 16 in the position occupied by tray 18 in FIGURE 1. For this purpose, all of the trays are equipped with handles 34 as shown on tray 20 in FIGURE 2. Another feature common to all of the trays is the provision of adjustable pressure resisting studs 35, protruding from the undersides of the trays. The studs 35, when the tray is in the unit 16, make contact with a base plate 36 to resist the pressure applied in the unit 16. Another feature

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common to all trays is the provision of a pattern of spring pressed, retractable pins 38, surrounding each of the openings 24. Their purpose is to guide a cover for each blister into its proper position relative to the sealing flange of the blister. When the tray is in the unit 16, and sealing pressure is applied, these pins retract to the level of the flanges and do not interfere with the pressing operation.

Referring to FIGURE 3, which is a partial section taken generally on the line 3-3 of FIGURE 2, the unit 16 contains a pneumatic pressure cylinder 40 actuating a pressure plate 42. The cylinder 40 is secured to a plate 44 which in turn is secured to the walls 46 of the unit 16. Suspended from the plate 44 are tension springs 48 which support a pressure platen 50 secured to the pressure plate 42. Brackets 52 are mounted on the platen 50 and each contains a stripper pin 54 surrounded by a compression spring 56 and having an end 54' protruding through the platen 50 which preferably has a surface layer 58 of somewhat resilient silicone rubber. The pins 54 and their contact ends 54' are insulated from the rest of the machine by conventional means not shown. A tray 18 is supported on rails 12 with its supporting studs 34 in contact with the base plate 36. Upon actuation of the cylinder 40, the pressure plate presses down the platen 50 into contact with the tray 18. Guide pins 38 retract into the tray 18 and stripper pins 54' retract into the pressure platen 50 after having established electrical connection with contacts 30 and 32. When pressure is established between the pressure platen 50 and the tray 18, a predetermined, selected voltage is applied to the electrodes 26 surrounding the openings 24 in the platen 18. The voltage is applied for a predetermined, but adjustable period of time. When the voltage is cut off, usually the pressure cylinder is deactivated and the pressure plate 42 rises to the position shown in FIGURE 3 by tension springs 48 drawing the pressure platen 50 away from the tray 18 while the stripper pins 54' assure separation between the pressure platen 50 and the tray 18 which is now ready for withdrawal to the left hand side of FIGURE 1 to be replaced by the tray 20, whereupon the cycle is repeated.

The space above plate 44 is more or less filled with equipment for carrying out the above described cycle. Such equipment is available in the open market, for which reason the transformers, timers, relays, limit switches, etc., will not be described in detail, but only in connection with FIGURE 12.

The heating electrodes, one example of which is shown in FIGURE 4, form a material and distinct part of this invention, and, indeed, such electrodes mark a major break-through in the art of heat sealing whether or not used in the context of the combination in which they here appear.

Referring now to FIGURE 4, a generally rectangular electrode 26 is shown. This, preferably is formed of highly resistant metal, e.g.: nirome or stainless steel. Various non-metallic and semi-metallic conductors have been developed and the use of any of these in place of the metallic conductors described herein is within the purview of this invention. These electrodes could be stamped from sheet stock at low unit cost, but since only limited quantities of any particular design are required, the die cost would be prohibitive. The electrodes, therefore, are machined from sheet stock, and the accuracy of machining versus stamping materially improves the performance of the electrodes. The essential factor is that at all points around the electrode, the width be constant. This becomes a problem only at corners which are machined to an internal radius  $R_1$ , both radii having a common center and having the relationship  $R_1 - R_2 = W$ . Of course, from the standpoint of electrical resistance, uniform heating requires uniform cross-section. Under modern production methods, however, thin sheet stock as here contemplated may be pressed, quite fairly, to be of uniform thickness within the rather limited area occupied by any



electrode. FIGURES 4, 4A and 4B may be considered to be characteristic of the overwhelming bulk of present practice. In all of these figures,  $L_1$  represents the feed line and  $L_2$  represents the return line. The lines  $L_1$  and  $L_2$  should be attached to the electrodes at such location that the lineal extent of the electrode between  $L_1$  and  $L_2$  shall be the same whether to right or left of each connection as shown in FIGURES 4, 4A and 4B.

FIGURE 4C is a special case where hermetic sealing is not required. Here a rectangle is defined by top and bottom strips 27 and 29 and by side strips 31 and 33. These several strips may about or be welded together, but preferably a slight gap is permitted at each corner and each strip has its own  $L_1$  and  $L_2$  connections. If necessary or desired, separate voltages may be applied to strips of the same length, e.g. 31 and 33 on the one hand and to 27 and 29 on the other. Simple straight strips as shown can be produced without resort to expensive machining operations.

While in FIGURE 2 the contact 32 represents  $L_1$  and the contact 33 represents  $L_2$  and the lines 23 connect the electrodes, this is simply a matter of convenience when the several electrodes 24 are identical. It is perfectly possible, using, for example, the electrodes of FIGURES 4, 4A and 4B to hook these in parallel, and even, still using a common return, to use separate  $L_1$  lines for each as will be made clear in the discussion of FIGURE 12.

The trays have certain physical requirements. They must be rigid, substantially inert chemically, highly resistant, both thermally and electrically, and should have a high degree of dimensional stability under varying conditions of temperature and humidity. The thickness of the tray should be considerable since thickness contributes greatly to rigidity, regardless of the elastic modulus of the material, and for this reason a laminated rather than a homogeneous structure usually will provide an optimum combination of cost and rigidity. Formica is recommended as a base material, but reinforced phenol condensation products, hardboards of the Masonite type and even marine type plywood may be used.

In FIGURE 5 there is illustrated a tray 18 having a container receiving opening 24 surrounded by a heating electrode 26. The body of the tray 18 is formed of formica or equivalent as above described. Over the upper surface of the tray 18 is adhered a layer of Teflon coated or impregnated glass cloth cut away at 24' to conform to the openings 24 in the tray 18. The electrodes 26 are secured to the glass cloth 24'. The electrodes usually will conform to the shape of the openings 24, but not necessarily. It is only essential that the electrode conform to the shape of the sealing flange of the container, and this, as a matter of choice, may or may not conform to the container outline. In fact, the opening 24 need not conform to the container outline. It is only necessary that the rim of the opening 24 conform to and support the container flange, and that it contain sufficient protrusions or other structure inwardly directed so as to function as a locating means for the container body.

A second ply or sheet of Teflon impregnated or coated glass cloth 24" is adhered to the ply 24' and to the electrodes 26. It also covers any and all lead wires or strips for the electrodes 26, and secures the electrodes against any possibility of dislodgment in use. Moreover, it inhibits any sticking between the electrodes and the container flange.

As will be made clear hereinafter, a similar arrangement will be used when a plastic lid is to be sealed to the blister flange by heat directed from above through the lid. In such case the general arrangement of parts and materials will be the same, omitting, however, the openings 24, and, usually, reducing the thickness of the board 18. In this case the boards are not "trays" in the sense that the part 18 is a tray, but are simply special carriers for the electrodes.

In FIGURE 6 the full lines at A indicate ordinary con-

tainer supporting trays. These, alternately, move to full line positions B in which positions they underlie electrode bearing plates, the electrodes of which register with the flanges of containers placed on trays at A. The superimposed plates and trays then advance to position C where pressure is applied to both and voltage is applied to the electrodes. The superimposed plates and trays are then withdrawn to position B where suitable stop means detains the electrode plate while the tray continues to position A for unloading and reloading. This is the preferred arrangement and is discussed in detail in connection with FIGURES 7 and 8.

An alternative arrangement is illustrated in dotted outline at positions B'. In this case, positions A are eliminated and the trays are loaded and unloaded at positions B. Electrode plates are pivoted at one side of the trays at position B and occupy swung out or inactive positions B' during loading of the trays. They are then swung into superimposition relationship at position B and in this superimposed relationship are advanced laterally to the sealing position C.

A further alternative arrangement is illustrated in dotted outline at positions A', which in this case represent the loading and unloading positions of the trays. The electrode plates are mounted in tray receiving frames at B. A loaded tray moves from A to B where it underlies an electrode plate. The assembly then moves to C for sealing, after which the assembly moves to B from which position the tray moves to position A' for loading and unloading. This alternative has the advantage, under some circumstances of permitting a single operator to load and unload trays at both positions A'.

A preferred arrangement of parts for sealing a plastic lid from the top is shown in FIGURES 7 and 8, and several alternatives for use in this arrangement are shown in FIGURES 9-11. These latter are auxiliary in nature, and for the purpose of simplicity are discussed independently of the showing of FIGURES 7 and 8. Indeed, as will be noted in the discussion of FIGURE 12, the forms of FIGURES 9-11 may be dispensed with by putting the duration of application of pressure under control of a separate timer from that controlling the duration of the voltage application to the electrodes. In FIGURES 7-11 reference numerals as applied to basic parts are the same as in FIGURES 1-3.

Referring now to FIGURE 7, there are shown tray rails 12 and 14 supporting respectively trays 18 and 20 with the latter in loading position and the former located in the pressure unit 16. The pressure unit 16 is provided with pressure cylinder 40 and pressure plate 42. Plate 42 is supported by springs 43.

An extension 14' of rails 14 is adapted to guide the tray 18 into position under a sealing plate 100 which itself is mounted on rollers 102 and carries spring biased stripper pins 1-4. Electrodes 26 are mounted in the lower surface of the sealing plate 100 as above discussed in connection with FIGURES 4-4C and FIGURE 5. Lines  $L_1$  and  $L_2$  connect the sealing plate 100 to a jack J which may be plugged selectively into a jack receptacle  $J_2$  to receive a selected voltage.

In FIGURE 7, the tray 18 has moved first to a position under its sealing plate 100 where its openings 24 register with electrodes 26 on the plate 100. At this point it encountered a stop on the plate 100. Tray 18 and plate 100 then moved in a continuous movement under the pressure plate 42 which then descended to the position shown to bring the tray 18 and its plate 100 under sealing pressure.

Upon completion of sealing the pressure is relieved in the cylinder 40 and springs 43 then raise the pressure plate 42. The sealing plate 100 is pushed upwardly by pins 154 and tray 18, with sealing plate 100, are withdrawn to the left of FIGURE 7.

A suitable latch engages between the tray and the sealing plate and is released when the sealing plate 100 ar-

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rives at leftward position equivalent to the right hand position shown for sealing plate 100. When tray 15 and sealing plate 150 are withdrawn, tray 20 moves to engage sealing plate 100 and the operation is repeated. It is to be noted that the sealing job for tray 13 may be different from that of tray 20 which means that the products sealed may be different as between the two trays.

Preferably, as discussed hereinafter in connection with FIGURE 12, an adjustable timer is provided to regulate the duration of the application of voltage to the electrodes 26. Since the electrodes have low mass there is little thermal inertia and the duration of heating closely approximates the duration of voltage application. Moreover, when the timer "times out" the pressure automatically is released. This works fine for bottom heat application where sticking between the lid and the pressure plate is not a factor, but it is not always satisfactory when heat is applied from above to a thermoplastic lid.

In the latter case, the problem can be solved by the addition of a second timer to control duration of pressure after the heating timer times out. This, however, complicates the circuitry and adds to the basic machine cost. FIGURES 9-11 show various ways of solving the problem without change of the basic circuitry of FIGURE 12.

In FIGURE 9, tray 20 and sealing plate 100 are shown just as the tray starts to move to its position below the plate 100. A web of Teflon coated or impregnated glass cloth 110 has one end 112 attached to the forward end of tray 20 and its opposite end 114 attached to the rear end of sealing plate 100. The body of the web 110 lies entirely clear of the upper surface of the tray 20 so as not to interfere with loading and unloading operations.

When the tray 20 is fully loaded with filled containers and the lids have been applied, the tray 20 is moved toward the sealing plate 100, into registry therewith, as shown in FIGURE 9A. In this condition the web 110 loosely overlies the entire upper surface of the tray 20, including the lids and containers. When heat and pressure are applied, the heat passes through the web 110 and then through the lids to the interface between the lids and the container flanges. Any sticking occurs solely between the lids and the web 110 and this disappears as the lid cools. The duration of heating becomes unimportant, and only the duration of the pressure matters. That is, the requisite voltage may be applied at all times to the electrodes and a timer may be used only to relieve pressure. The parts remain in undisturbed contact after the pressure is relieved and until the tray and sealing plate are removed from the pressure station 15 to the left hand position of FIGURE 9A. By this time the parts will have cooled so that continued movement of the tray 20 to the position of FIGURE 9 can peel the web 110 away from the tray without adverse effect on the seals.

In FIGURE 10, the left hand end 112 of the web 110 is attached to the left hand end of the tray 20. The right hand end 116 of the web remains free until the tray is fully loaded, then is secured by snap means 118-118' to the right hand end of the tray 20. This permits a longer cooling period to elapse before the web 110 is stripped from the lids of the sealed containers.

In FIGURE 11 the left hand end 112 of the web 110 is secured to the left hand end of the tray 20. The major portion of the web 110, however, is stored on a roll 120 rotatably mounted in brackets 122 secured to the sealing plate 100. The roll 120 is spring biased in the manner of the conventional window shade to its wound up condition as shown in FIGURE 11. Leftward advance of the tray 20 under the sealing plate 100 unwinds the web 110 from the roll 120 to overlie the lids and containers placed on tray 20. On return of the tray 20 to the position of FIGURE 11 the spring bias of the roll 120 peels the web 110 from the sealed containers.

Referring now to FIGURE 12 which depicts the wiring preferred when the lid or cover is cardboard but is equally applicable to top sealing of plastic lids as above described,

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line  $L_1$  is treated as the "hot" line and line  $L_2$  is treated as the return line. A main switch  $L_{12}$  conditions the entire plant for operation. As a tray 13 is inserted into the pressure unit 15, it first encounters a tray switch  $TrS$ . This, preferably, is a limit switch with a roller arm and is wired directly to a relay  $R_2$  which is conditioned to a normally open position (NO), and also to a normally closed position (NC) as shown at the right hand side of FIGURE 7. As the tray continues from approximately its halfway position ( $TrS$ ) to its final position defined by kerfs cut into the rails 12-14, it thereby closed a rail switch  $RS$  which is a limit switch of the plunger type. This energizes a line 75 through the normally closed side of relay  $R_2$  and a solenoid  $SOL-1$ . The solenoid  $SOL-1$  operates a valve to actuate the pressure cylinder 49. When the pressure in the cylinder 49 reaches a predetermined point, pressure switch  $PS_1$  closes to start timer  $T$ . The starting of timer  $T$  simultaneously energizes control relay  $C_1$  which closes normally open switch  $S_2$  which, in turn, energizes the secondary coil  $TR_2$  (primary not shown) of a transformer and thereby energizes the several electrodes  $E_7$  mounted in the pressure platen 50. These electrodes are retractable. Although all of the electrodes  $E_7$  are energized, only one of them will make contact with a particular "input" electrode (32-32') on a particular tray 20, thereby applying heating current to the sealing bands 25 (FIGURE 2). A simple electrode through the heat elements  $E_2$  completes the circuit to line  $L_2$ . Since each of the electrodes  $E_7$  carries a different voltage the heating effect will vary from tray to tray depending on the character of the blister and its cover.

Now the adjustable timer  $T$  runs out and in so doing reverses the indicated NO and NC positions of the timer switch 77 to deenergize  $C_1$  and to energize  $C_2$ . The latter breaks the circuit through switch  $R_2$  (NC), thereby deenergizing  $SOL-1$  and exhausting air from the pressure cylinder 49 to permit rise of the pressure platen 50. The reduction of pressure, of course, opens the pressure switch  $PS_1$ . A further effect is to close normally open relay  $R_2$  to hold the timer  $T$  at zero and prevent recycling until the tray is withdrawn clear of the tray switch  $TrS$  when all circuits are broken and the timer  $T$  is reset for the next seal. It is to be noted that the timer  $T$  controls only the duration of the application of voltage to the heat sealing bands 25. It becomes effective only when a sealing pressure is attained, and when it times out, not only is heating terminated but the pressure is relieved.

It will be noted that in FIGURES 7-11, the electrode bearing sealing plates 100 and 150 simply constitute removable substitutes for the pressure platen 50 of FIGURE 3. The jack  $J$  and jack receptacle  $J_1$  of FIGURE 7 function precisely in the manner of the electrodes  $E_7$ , 32-32' and  $E_2$  described in connection with FIGURE 12. The essential element is to bring the electrodes into registry with the containers to be sealed and is the same whether registry is attained by original assembly as in FIGURES 2 and 5 or by physical movement of the parts as in FIGURES 7-11.

It will be understood that the wiring diagram just discussed represents a preferred but not indispensable embodiment. Variations may be made depending on the engineering taste of the designer. This invention, therefore, is not to be limited to the precise details disclosed but only as set forth in the subjoined claims. In its method aspect, the sequence of steps recited in the claims is not material unless explicitly so stated.

We claim:

1. A machine for sealing lids onto preformed containers comprising: a pressure unit, said pressure unit having associated therewith a predetermined number of contacts, each of said contacts having a predetermined location, and each supplying a predetermined voltage differing from the voltage supplied by the others of said contacts; a tray supporting means; a tray having means to position a peripherally flanged container placed therein; a heat sealing



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electrode conforming generally to the container flange, said electrode being formed of electrically conductive but resistant material and said electrode having a contact located to engage a predetermined one of said pressure unit associated contacts; said tray and its associated electrode being movable into position for engagement respectively with said pressure unit and a predetermined one of said pressure unit associated contacts; means for applying to said electrode through said engaged contacts a predetermined voltage while applying to a lid overlying the outer periphery of each container pressure sufficient to effect a seal between said lid and said peripheral flange; and means for relieving said pressure to permit the removal of said tray from said pressure position.

2. A machine as set forth in claim 1 in which the electrode is mounted on said tray.

3. A machine as set forth in claim 1 in which each tray has means to locate a lid in proper relationship to said container.

4. A machine as set forth in claim 1 in which the electrode is mounted on a carrier separate from the tray.

5. A machine as set forth in claim 1 in which the trays for differing types of containers are at all times freely interchangeable on the tray supporting means.

6. A tray for sealing lids onto preformed containers, said tray comprising: a rigid backing member, said member having at least one opening through its surface designed to position a preformed container therein; at least one sealing electrode surrounding said opening and defining a sealing area for the preformed container to be positioned therein, and retractable pins extending from the surfaces of said backing member adjacent said opening, said pins acting to position a lid for said container.

7. A tray for sealing lids onto preformed containers, said tray comprising: a rigid backing member, said member having at least one opening through its surface designed to position a preformed container therein; at least one sealing electrode surrounding said opening and defining a sealing area for the preformed container to be positioned therein, and adjustable pressure resisting studs protruding from the side of said tray opposite the side bearing said electrode.

8. A tray for sealing lids onto preformed containers, said tray comprising: a rigid backing member, said member having at least one opening through its surface designed to position a preformed container therein; at least one sealing electrode surrounding said opening and defining a sealing area for the preformed container to be positioned therein; a sheet of non-sticking material secured to said backing member and underlying said electrode and a second sheet of non-sticking material overlying said electrode and said first named sheet and being secured to said first named sheet and to said electrode.

9. A tray for sealing lids onto preformed containers, said tray comprising: a rigid backing member, said member having at least one opening through its surface designed to position a preformed container therein; at least one sealing electrode surrounding said opening and defining a sealing area for the preformed container to be positioned therein, said electrode being formed of thin, flat sheet metal of constant width throughout the lineal extent of said electrode, said width being measured on

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lines normal to the edge of said electrode at any point in said lineal extent; a sheet of Teflon-like material adhered to said backing member and underlying and being adhered to said electrode and a sheet of Teflon-like material overlying said first named sheet and being adhered to said sheet and to said electrode.

10. A tray for sealing lids onto preformed containers, said tray comprising: a rigid backing member, said member having at least one opening through its surface designed to position a preformed container therein; at least one sealing electrode substantially surrounding said opening and defining a sealing area for a preformed container to be positioned therein, and means on said tray adjacent said electrode for positioning a lid in predetermined relationship to said container and said electrode.

11. A machine for sealing lids onto preformed containers comprising: a pressure unit, said pressure unit having associated therewith sources of predetermined voltages; a carrier having means to position a container and means to position a lid thereon; a carrier supporting means having a container and lid positioning station and a pressure unit station; an electrode formed of electrically conductive but resistant material, said electrode being sized, shaped and located to effect a seal between said lid and said container; said carrier being movable on said carrier supporting means from said container and lid positioning station to said pressure unit station; means operative concomitantly with arrival of said carrier at said pressure unit for selecting a predetermined one of said predetermined voltages and means for applying sealing pressure between said lid and said container; means controlling the duration of said pressure application, and means controlling the application of said predetermined voltage to said electrode.

12. A machine for sealing lids onto preformed containers comprising: a pressure unit, said pressure unit having associated therewith sources of predetermined voltages; a carrier having means to position a container and means to position a lid thereon; electrode means formed of electrically conductive but resistant material, said electrode means being sized, shaped and located to effect a seal between said lid and said container; said carrier being movable into active relationship with said pressure unit station; means operative concomitantly with arrival of said carrier at said pressure unit for selecting a predetermined one of said predetermined voltages and means for applying sealing pressure between said lid and said container; means controlling the duration of said pressure application, and means controlling the application of said predetermined voltage to said electrode.

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Feb. 23, 1965

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MEANS FOR HEAT SEALING LIDS ON BLISTERS

Filed Sept. 12, 1963

5 Sheets-Sheet 1

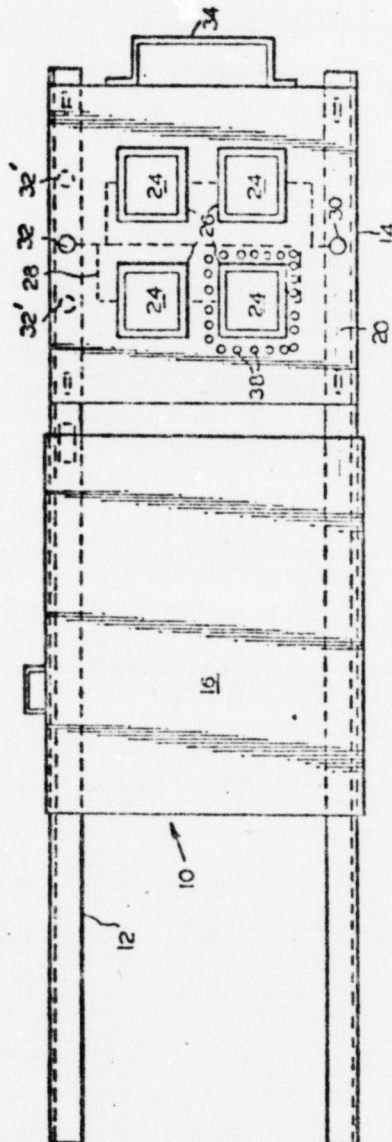


FIG. 2

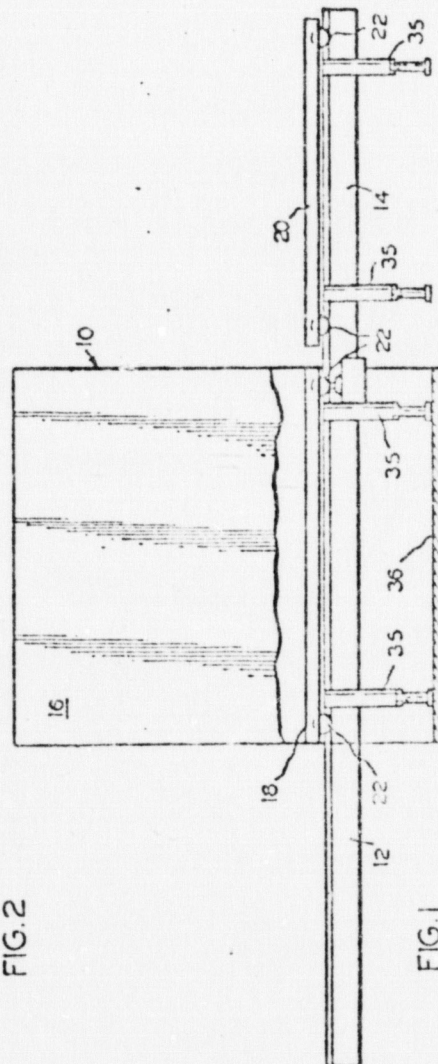


FIG. 1

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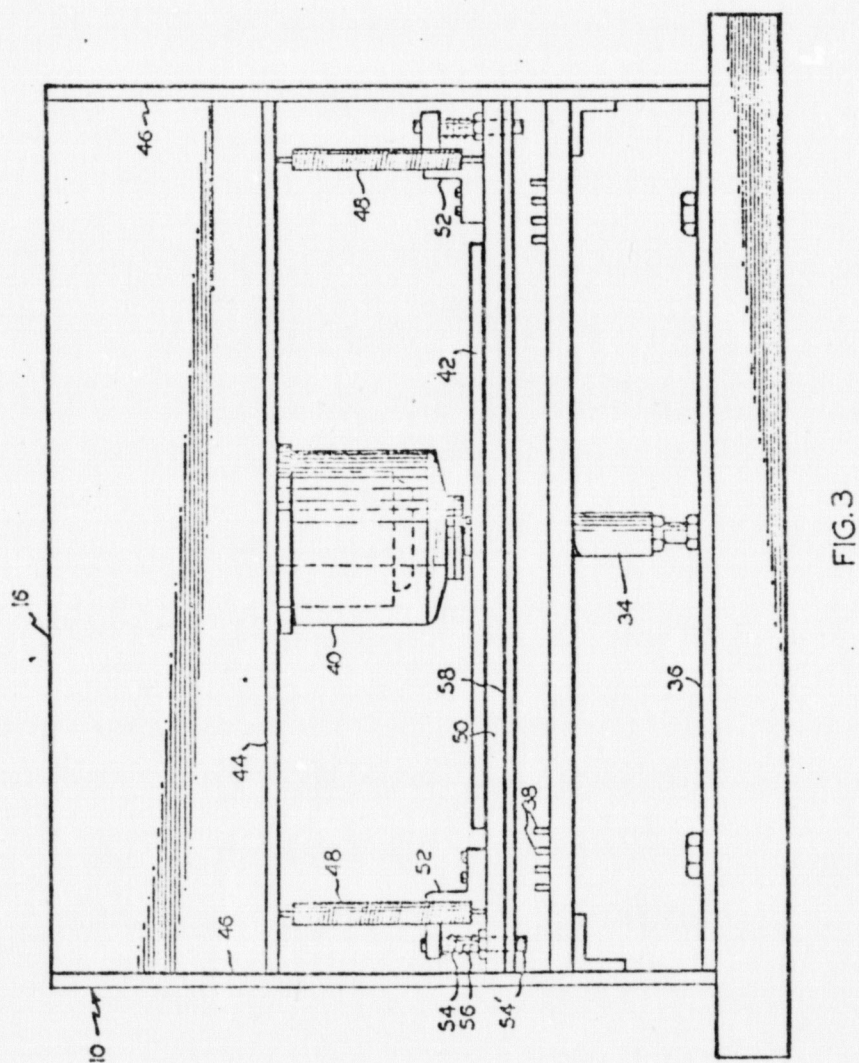
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MEANS FOR HEAT SEALING LIDS ON BLISTERS

Filed Sept. 12, 1963

5 Sheets-Sheet 2



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MEANS FOR HEAT SEALING LIDS ON BLISTERS

Filed Sept. 12, 1963

5 Sheets-Sheet 3

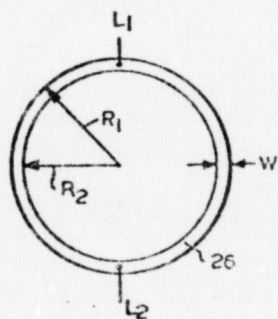


FIG. 4A

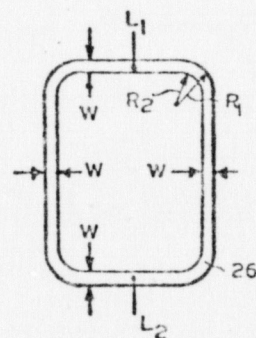


FIG. 4

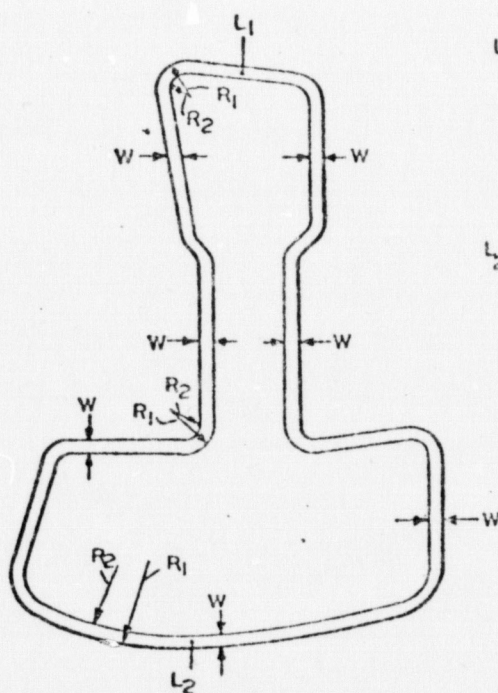


FIG. 4B

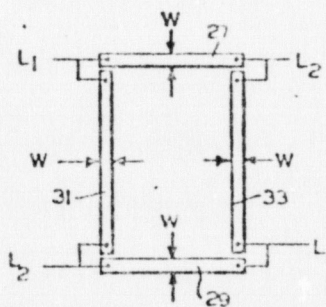


FIG. 4C

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3,170,275

5 Sheets-Sheet 4

ATTORNEY

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Feb. 23, 1965

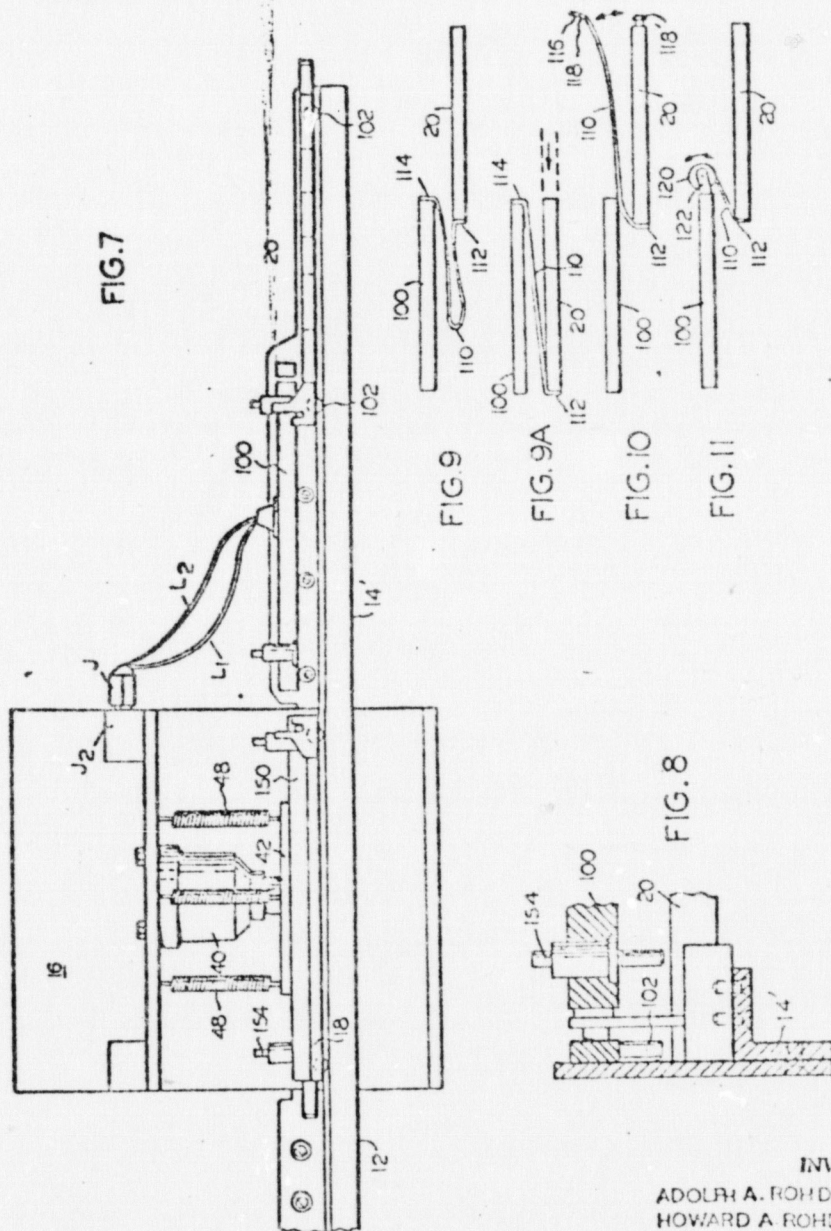
H. A. ROHDIN ET AL

3,170,275

MEANS FOR HEAT SEALING LIDS ON BLISTERS

Filed Sept. 12, 1963

5 Sheets-Sheet 5



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x x x



**A** 93a

**A** 94a

EXHIBIT B

See opposite page



## United States Patent

3,617,696

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[21] Appl. No. 726,436  
[22] Filed May 3, 1968  
[45] Patented Nov. 2, 1971

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Primary Examiner—C. L. Albritton  
Attorney—Milton Robert Kestenbaum

[54] HEAT-SEALING APPARATUS  
18 Claims, 10 Drawing Figs.

[52] U.S. Cl. .... 219/243,  
53/373, 156/583, 219/501, 323/24

[51] Int. Cl. .... H05b 1/00

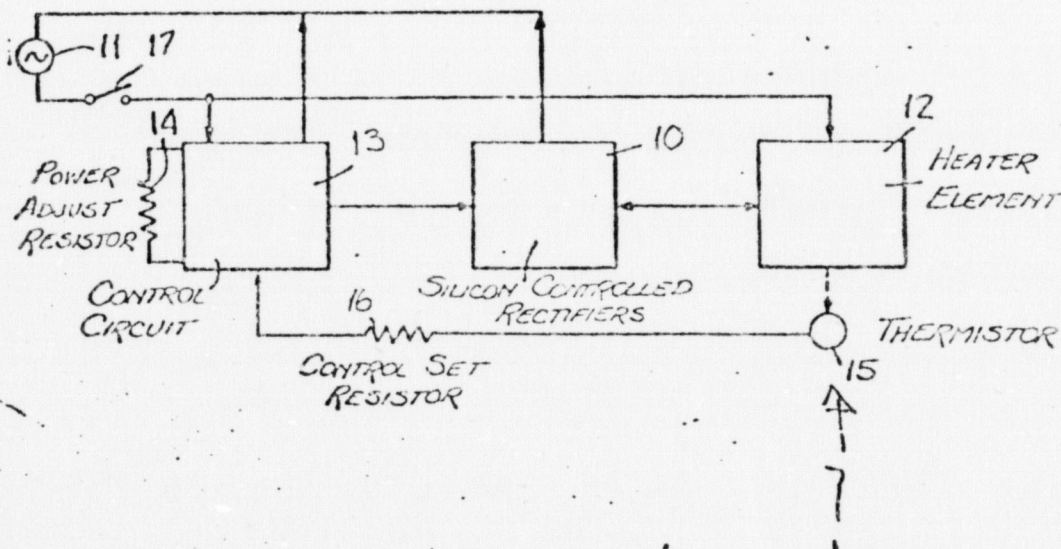
[50] Field of Search ..... 219/243,  
501; 53/39, 373; 156/583; 323/24

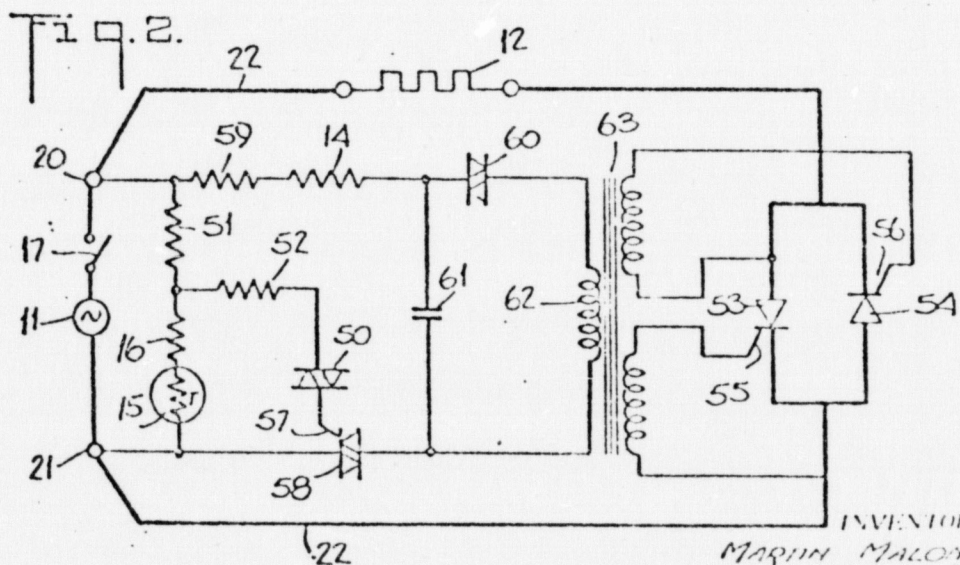
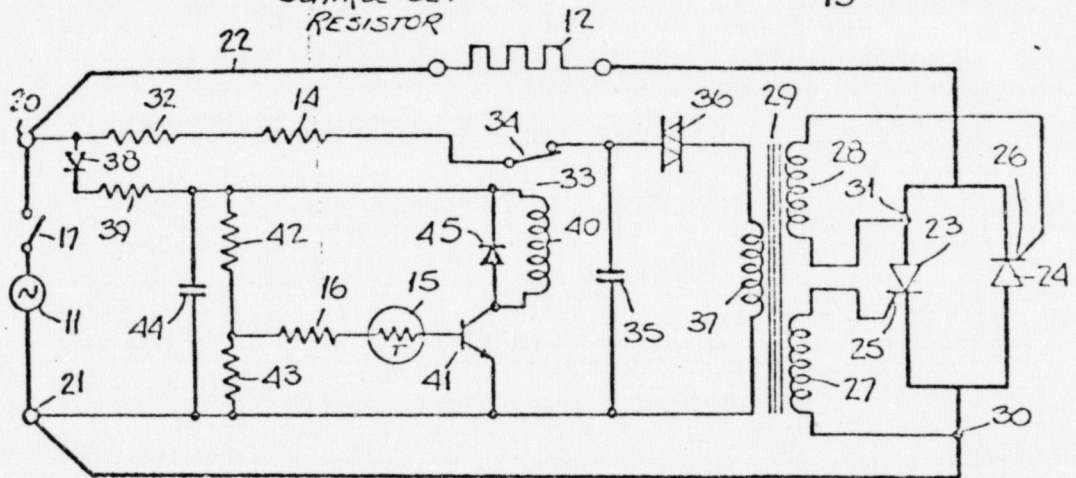
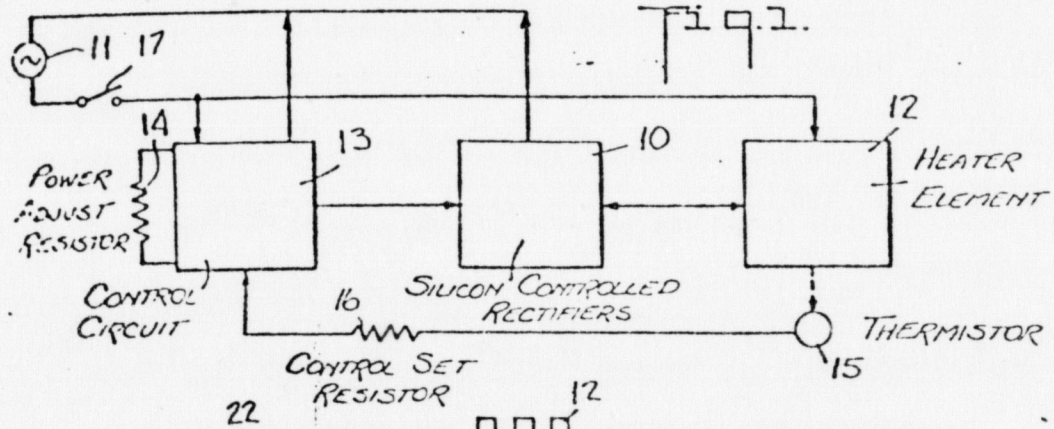
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ABSTRACT: A heat-sealing tray is comprised of a thin sheet of heater element material bonded to an insulating substrate and a rigid backing member. The sheet is etched out in a pattern defining a heating current path. An automatic temperature-limiting control circuit is connected to the sheet. The circuit operates in full wave configuration and controls the partial cycle conduction of current through the heating path. A temperature sensor signals the circuit to remove the current through the path when a predetermined temperature is reached.





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Fig. 2A.

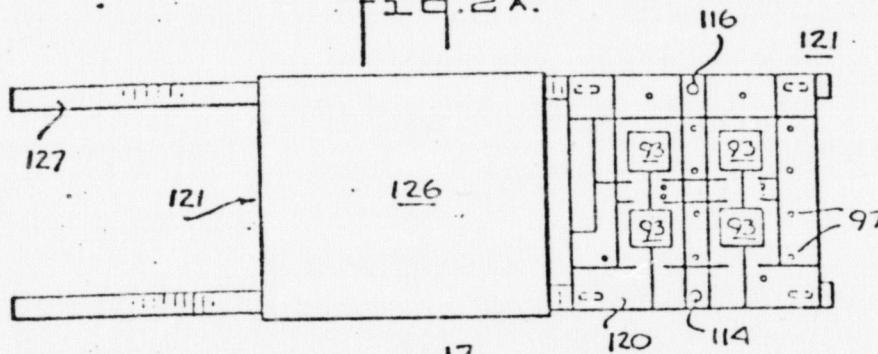


Fig. 2B.

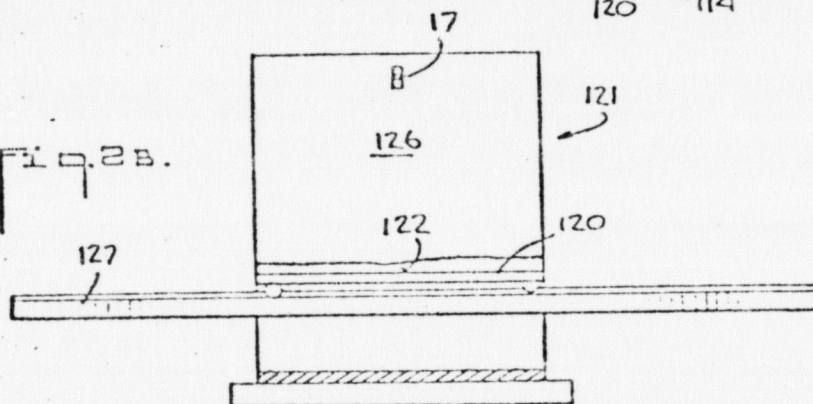
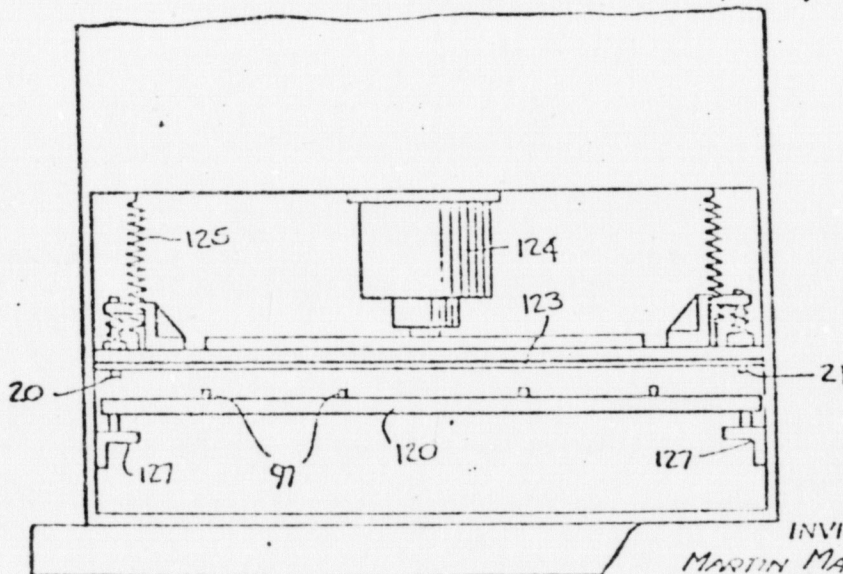
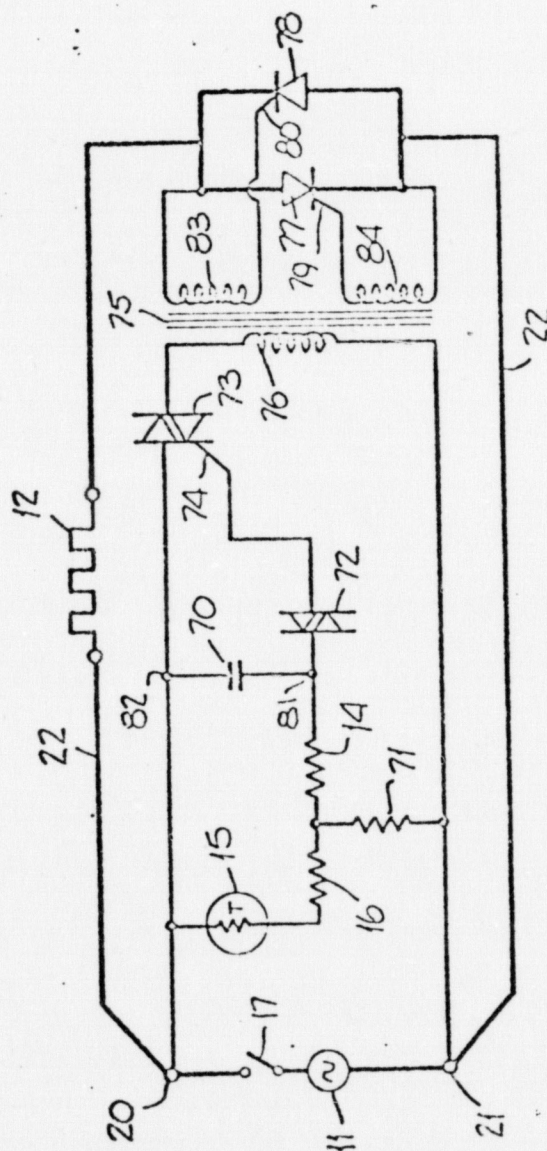


Fig. 2C.



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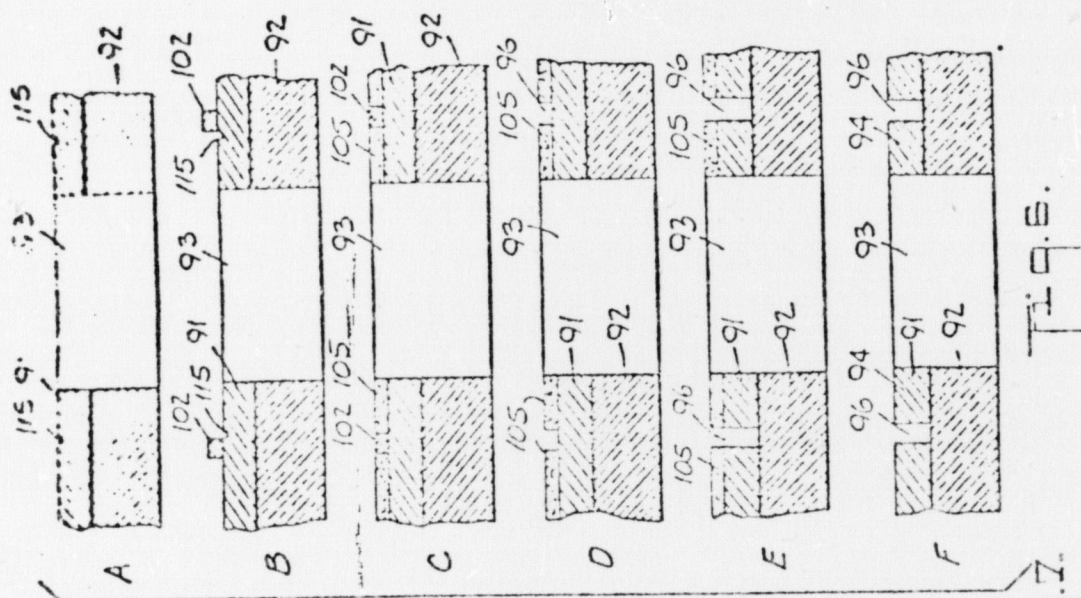


Fig. 7.

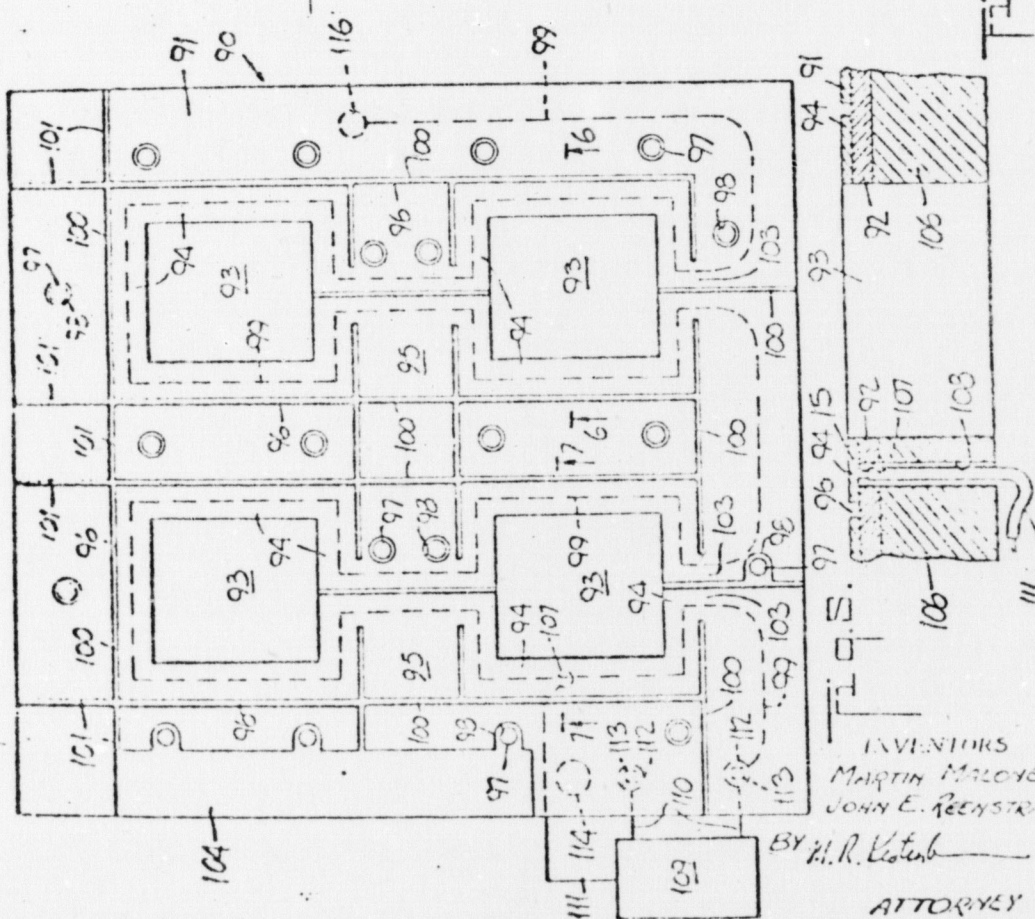


Fig. 8.

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B-5

## HEAT-SEALING APPARATUS

This invention relates to heat-sealing apparatus and more particularly to the design and arrangement of heater elements and to means for controlling the operating temperature of heater elements.

Heat-sealable materials, such as plastic and plasticized materials, when used in packaging may be sealed serially into pouch-type containers or as separate preformed containers which are sealed individually or in groups. It should be understood that the principles and teachings of the present invention are applicable to heater elements used with any form or method of heat sealing, notwithstanding that the embodiment shown relates to heater elements used for sealing lids onto separate preformed containers called blisters.

In blister packaging, preformed plastic containers are placed open side upwards in individual openings called pockets adapted to receive and hold one or more of them in position for sealing with their edges extending beyond the opening. The intended contents are placed in each blister and a lid is placed over each and sealed to a peripheral flange on the blister through a combination of heat and pressure. One type of heater element takes the form of Nichrome or stainless steel bands or wires which are arranged in the shape of the planar outline of the blister at its peripheral flange. Blisters of different sizes and configurations require different lengths of heater element to affect a seal about them. The power required to bring these heater elements to operating sealing temperature increases as the total length of heater element increases. The problem then is to seal blisters of different sizes and configurations in the same heat sealing machine. One method is to adjust the power setting of the machine for different blisters. This requires that the machine be adjusted each time a blister requiring a different sized heater element is to be sealed and as a practical matter precludes sealing different blisters at a mechanized rate.

Another method is to have a number of voltage probes serially arranged in the heat-sealing machine in voltage descending steps and a contact button associated with the heater elements which is prepositioned to make contact with the probe supplying the voltage most appropriate for the power requirements of that heater element. This arrangement is conducive to arcing between the probes and the contact button.

In both of these methods there is a marked tendency for the heater elements to overheat and burn out the sheet of nonstick material placed over them requiring frequent replacement.

Present heater elements are made up of strips or die-cut forms. In the usual case, a number of blisters are sealed at the same time. Each is positioned in a separate opening on a rigid member known as a heat-sealing tray. Each opening is surrounded by its own heater element having a layer of nonstick material thereon. The strips or die-cut forms are connected together by welding or brazing wires to each heater element piece and soldering these wires to each other. The number of openings per tray is determined by the size of the package to be sealed.

The present method of construction is excessively time consuming and costly and is inherently unreliable due to the many welded and soldered connections. The welded wires, which pass through access holes in the tray beneath the heater element are detrimental in two ways: First, they tend to restrain the heater element from expanding when hot and thereby cause undue stress which fatigues the element and causes breakage of the heater element or the welded connection; secondly, the wire drains heat from the element causing a higher than required operating temperature in order to effect a seal in the area where the weld is made.

An object of this invention is to provide an apparatus for limiting the operating temperature of heater elements used in heat sealing applications.

Accordingly, another object of this invention is to provide an apparatus for automatically selecting and controlling the power delivered to heat-sealing heater elements.

Another object of this invention is to provide means for protecting nonstick material positioned over heater elements from burning out.

Yet another object of this invention is to provide means for sealing lids to preformed containers of different sizes, materials, configurations or different combinations of these characteristics, without changing the power setting of the heat sealing machine.

A further object of this invention is to greatly enhance the ease and economy of manufacture of heat-sealing trays.

An additional object of this invention is to provide heater elements on heat-sealing trays without welded or soldered connections to the heater elements.

Another object of this invention is to eliminate heat drains from heater elements.

Still another object of this invention is to provide a novel heat-sealing tray in which heater elements are etched from a foil of heater material.

These objects are accomplished in the present invention by an electronic circuit arrangement, including silicon controlled rectifiers used in full-wave configuration with partial cycle conduction to maintain a constant root mean square current which is preset by resistor selection to yield the required power for each heater element. For the same packaging material, the power required is based on the length of the heater element. The temperature of the heater is sensed by a thermistor located in close proximity to the heater element. The thermistor output is applied to a solid-state control circuit which when the desired operating temperature is achieved removes the control signal from the silicon controlled rectifiers, removing the flow of current to the heater element.

Advantageously, the temperature control circuit limits the temperature of heater elements formed by etching the desired heating current path in a foil of heater material. The foil is positioned on a substrate which is affixed to the rigid tray.

These and other objects and features will be fully understood from the following detailed description taken together with the annexed drawings in which:

FIG. 1 is a system diagram of the electronic circuit.

FIG. 2 is a detailed circuit diagram of one form of the electronic circuit employing transistor and relay means for controlling the silicon-controlled rectifiers.

FIG. 2A is a top view of a heat-sealing machine showing the tray in loading position.

FIG. 2B is a side view of a heat-sealing machine showing the tray in sealing position.

FIG. 2C is an end view of a heat-sealing machine showing the pressure head and impulse terminals.

FIG. 3 is a detailed circuit diagram of a form of the electronic circuit employing diac and triac means for controlling the silicon-controlled rectifiers.

FIG. 4 is a detailed circuit diagram of another form of the electronic circuit employing diac and triac means for controlling the silicon-controlled rectifiers.

FIG. 5 is a plan view of an etched heater tray.

FIG. 6, A-F is a partial sectional view through section lines 6-6 in FIG. 5 at successive stages in its fabrication.

FIG. 7 is a sectional view through section lines 7-7 in FIG. 5 showing the position of the thermistor probe.

The system diagram of the electronic circuit arrangement for controlling the power and limiting the operating temperature to heat-sealing heater elements is shown in FIG. 1. A silicon-controlled rectifier circuit 10 is connected between an AC power source 11 and a heater element 12. A control circuit 13 also operates off the power source 11 and is connected to provide a control signal to the silicon-controlled rectifier circuit 10. The control circuit 13 has a power adjust resistor 14 therein for controlling the firing angle of the silicon controlled rectifiers so as to control the power to the heater element 12. A thermistor 15 is positioned close to the heater element 12 and is connected in the control circuit 13 through a control set resistor 16.

Circuit Operation



When power is applied from the AC power source 11 upon closure of switch 17, and the heater element 12 is below operating temperature, the thermistor 15 is at a high resistance, delivering no signal to control circuit 13. A control signal is then allowed to pass to the silicon-controlled rectifier circuit 10 which applies power to the heater element 12. This power causes the temperature of the heater element 12 to rise which causes the temperature of the thermistor 15 to rise. When operating temperature is reached, the thermistor 15 becomes a low resistance, and delivers a signal to the control circuit 13 which abruptly removes the control signal from the silicon-controlled rectifier circuit 10. Lack of control signal to the silicon-controlled rectifier circuit 10 causes it to block the flow of current to the heating element 12 from the AC power source 11 causing no further rise in temperature. Thereafter the temperature of the heater element 12 will decrease until the resistance of the thermistor drops to a point where the control circuit 13 will restore a control signal to the silicon-controlled rectifier circuit 10. Adjustment of the power is achieved by selection of resistor 14 based on the length of the heater element 12.

Control set resistor 16 is used to adjust the correct operating temperature of the heater element 12. Its primary function is to provide compensation for normal variation in the characteristics of the control circuit 13, the resistance of thermistor 15 and thermodynamic properties of the heater element 12 and its environment.

The power and temperature control circuit may be arranged in either of two ways:

1. Installation on a moveable tray which contains the opening or other means for positioning the blister and the heater element which is adapted to surround the blister. The control circuit 13, silicon-controlled rectifier circuit 10, thermistor 15 and control set resistor 16 may be attached to the tray requiring only the application of AC voltage to the tray for operation.

2. Installation in heat-sealing machine. The control circuit 13 and silicon-controlled rectifier circuit 10 may be mounted in the heat-sealing machine for use with many trays.

Power adjust resistor 14, thermistor 15 and control set resistor 16 are mounted to each tray, which requires six electrical connectors between the tray and machine:

- two for resistor 14
- two for thermistor 15 and resistor 16, and
- two for heater element 12

Tables I and II show the proper resistance of the power adjust resistor 14 for a heater element 12 formed of 1/4-inch wide by 0.005-inch thick stainless steel band in the temperature control circuit shown in FIG. 2. Variation of either width or thickness will require different resistor values as do the circuits shown in FIGS. 3 and 4. Table I applies to a single heater element or a number of heater elements connected in series to seal a number of blisters simultaneously. Table II applies to an even number of heater elements for sealing an even number of blisters simultaneously. The heater elements are divided into two equal sets of serially arranged heater elements which sets are connected in parallel, e.g. for six heater elements, within each of two sets of three, heater elements are connected in series and the sets are connected together in parallel.

TABLE I  
HEATER ELEMENTS IN SERIES

Heater Length—Inches	Resistance of Power Adjust Resistor
25 to 35	10,000 ohms
35 to 45	8,200
45 to 55	2,700
55 to 65	1,000
65 to 75	300

TABLE II

HEATER ELEMENTS IN SERIES PARALLEL

Heater Length—Inches	Resistance of Power Adjust Resistor
50 to 70	10,000 ohms
70 to 90	8,200
90 to 110	2,700
110 to 130	1,000
130 to 150	300

The details of the electronic circuit for achieving the system functions described above will now be described with reference to FIG. 2, 2A, 2B and 2C.

A power source 11 of a fixed voltage of 50 volts at 60 cycles per second has terminals 20, 21 controlled by an on-off switch 17. A conducting line 22 of 12 gauge wire attached to the tray connects the heater element 12 to these terminals through a pair of silicon-controlled rectifiers 23, 24 arranged in shunt-opposed relationship. The power source 11 and its terminals 20, 21 are located in the housing 126 of heat-sealing machine 121. The heater element 12 is located on a moveable tray 120 which passes on rails 127 between a blister loading position 121 and a sealing position 122 beneath the pressure head 123 of the heat-sealing machine. The blister is placed in an opening 93 in the tray 120 to position it open side upwards to receive the contents to be sealed within the blister. The blister has a planar flange which extends beyond the opening to rest upon the protective layer over the heater element.

Each tray may contain an opening 93 for receiving one blister or a number of openings 93 for several blisters with the heater elements surrounding each opening arranged in series or in series parallel as above described.

At each tray opening, means such as depressible pins 97 hold the sealable cards in place over the blister planar flanges.

The blisters, the container contents and the sealable cards are loaded onto the tray at a loading position 121 which is accessible to the operators and away from the pressure head 123 of the heat-sealing machine. After the tray is loaded, it is passed beneath the pressure head 123 of the heat-sealing machine. When the tray is moved to the heat sealing position 122, the pressure head becomes actuated by pneumatic pressure cylinder 124 acting against tension springs 125 to apply pressure to squeeze the cards and the blister flanges against each other. Then in a successive stage of the heat-sealing cycle, the heater elements are energized to bring them to heat-sealing temperature, after which the thermal energy is removed, the pressure is released and the tray is moved out of the heat-sealing position so that the sealed blister containers can be removed and the trays reloaded.

The terminals 20, 21 are arranged in the sealing machine to make contact through suitable connectors 114, 116 in the tray to lines 22 when the sealing cycle commences. This contact may be made, as shown, by the use of probes in the sealing machine and aligned buttons 114, 116 in the tray which come in contact upon actuation of the pressure head in the heat-sealing machine. The silicon-controlled rectifiers 23, 24 have gates 25, 26 which are connected through secondary windings 27, 28 of a transformer 29 to the cathode side 30, 31 of their respective silicon controlled rectifiers.

Also electrically connected between the terminals 20, 21 is the pulse-forming circuit comprising series-connected resistor 32 and power adjust resistor 14, a contact 34 of a relay 33, a capacitor 35, a diac 36 and the primary winding 37 of transformer 29.

A third circuit, which has for its purpose to interrupt the flow of current through the pulse-forming circuit, is also electrically connected between the terminals 20, 21. This circuit includes the series arrangement of rectifier 38, resistor 39, coil 40 of the relay 33 and transistor 41. Thermistor 15 is con-

connected between the base of transistor 41 and to the voltage divider arrangement of resistors 42, 43 through the control set resistor 16. This arrangement is shunted by bias filter capacitor 44.

Diode 45 is connected across the coil 40 at the collector of transistor 41 to suppress the relay arc to protect the transistor.

#### Operation

When 50 volts r.m.s. is applied through terminals 20, 21 capacitor 35 is charged through resistor 32 and power adjust resistor 14 in series with contact 34 of relay 33. For the half cycle when terminal 20 is positive with respect to terminal 21, capacitor 35 is charged such that its relay contact side is positive, and the time to charge is regulated by the product of its value and the sum of resistor 32 and power adjust resistor 14. Resistor 32 is a current-limiting resistor to protect the diac 36. Capacitor 35 will charge until the voltage across it is sufficient to break down the diac 36, which is a device that exhibits a negative resistance characteristic, i.e. once breakdown voltage is achieved, regardless of polarity, its resistance to flow of current is sharply reduced. The voltage at which this occurs is between 28 and 32 volts. When breakdown of diac 36 occurs, capacitor 35 discharges abruptly through diac 36 causing an impulse of current to flow in the primary winding 37 of transformer 29. The secondary windings 27, 28 of transformer 29 are connected such that a positive impulse of voltage appears at the gate 25 of silicon-controlled rectifier 23. During this half-cycle, the anode of silicon-controlled rectifier 23 is positive and a positive gate voltage will cause it to conduct allowing current to flow through the heater element 12 causing its temperature to rise. The portion of this half-cycle for which current will flow is determined by the values of resistor 32, power adjust resistor 14 and capacitor 35. Thus silicon controlled rectifier 23 conducts for a preselected portion of each half-cycle when terminal 20 is positive.

During the alternate half-cycles when terminal 21 is positive, capacitor 35 charges in the opposite polarity and the circuit operates in a like manner except that a positive impulse of voltage will be applied to the gate 26 of silicon-controlled rectifier 24 causing it to conduct and to allow current to flow through the heater element 12.

Again, the portion of this half-cycle for which conduction occurs is controlled by the values of resistor 32, power adjust resistor 14 and capacitor 35 and is the same preselected portion as when silicon controlled rectifier 23 is conducting.

In both conditions the conduction portion of the cycle is established in accordance with the length of the heater element 12 and is selected to provide an r.m.s. or heating value of current which is a constant, i.e. the same for all heater elements regardless of their length, yielding a constant power per unit length of heater element. Selection is made by selection of the power adjust resistor 14, for example, as detailed in tables I and II for the example of a specific type and size of heater element.

The alternating current applied to terminals 20, 21 is also rectified by diode 33 and the resulting half-wave-rectified DC voltage is smoothed by the filter network consisting of resistor 39 and capacitor 44 and applied to the collector of switching transistor 41 in series with the coil 40 of relay 33. Resistor 39 is also a current-limiting resistor to protect the diode 33. DC current is also applied through the voltage divider network of resistors 42, 43 and the series combination of the control set resistor 16 and thermistor 15 to the base of transistor 41. When power is first applied, the thermistor 15 is at room temperature and its resistance is very high which allows insufficient current to flow into the base of the transistor 41 to allow it to conduct. The thermistor 15 is in close proximity to the heater element and its temperature will increase as the temperature of the heater element increases. As the thermistor 15 increases in temperature its resistance decreases allowing current to flow into the base of the transistor 41. When a tem-

perature is reached where base current is sufficient to cause the transistor 41 to conduct, it switches abruptly to the conduction state causing current to flow through the coil 40 of relay 33 causing its contact 34 to open. Opening of contact 34 prevents current flow to capacitor 35 which will then no longer supply impulses to the gates 25, 26 of the silicon-controlled rectifiers 23, 24 and no further current will flow through the heater element 12 and its temperature will no longer rise.

Control set resistor 16 in series with the thermistor 15 is used to adjust the temperature at which the transistor 41 will switch. This allows for compensation for variations in characteristics between different transistors 41. If a particular transistor has a low operating point, a larger resistance 16 is selected to permit less current to flow through the transistor. Selection of this resistor need only be made once upon the initial installation of the temperature control unit in the tray. Once selected it requires no further adjustment. Its value will most often fall within the range of 5,000 to 15,000 ohms.

When the current flow to capacitor 35 is prevented, the heater element 12 will begin to cool and the thermistor 15 will increase in resistance until transistor 41 will cut off and relay 33 will drop out, closing its contact 34. At this point, the circuit will operate to reheat the heater element 12. During a normal heat-sealing cycle, power is applied to the terminals 20, 21 for only a few seconds after heater shut-off while the tray is under pressure. The cool-down time of the thermistor 15 is about 15 seconds and therefore only one heater shutoff operation as above described occurs during each heat sealing cycle.

Arcing, which has been experienced with probe and contact button arrangements in prior art trays, is eliminated by virtue of the action of the silicon-controlled rectifiers and the control circuit. Arcing will only occur when current is flowing through the circuit.

The silicon-controlled rectifiers will block the passage of current through the heater element circuit for the portion of the initial cycle of current during which the impulse-forming portion of the control circuit is charging up. This may be 10 electrical degrees or more depending upon the predetermined portion of the half cycle for which conduction is established. Therefore current will not flow upon closure of the probe and contact button. As above described, current through the heater element circuit is shut off before the heat-sealing cycle is concluded. Hence the silicon-controlled rectifiers will again be blocking the flow of current before the probes and contact buttons are separated.

FIG. 3 shows another embodiment of the temperature control circuit in accordance with my invention in which a combination of a diac 50 and a triac 58 replace the combination of the transistor 41 and the relay 33 of the embodiment shown in FIG. 2, for cutting off the flow of current to the pulse-forming capacitor 61.

The circuit which includes the heater element and silicon-controlled rectifiers contains the same arrangement of elements as the circuit in FIG. 2. The pulse-forming circuit connected between terminals 20, 21 comprises series-connected resistor 59 and power adjust resistor 14, a capacitor 61, a diac 60, the primary winding 62 of a transformer 63 and a triac 58.

A third circuit electrically connected between the terminals 20, 21 which has for its purpose the interruption of the flow of current through the pulse-forming circuit, includes the series arrangement of resistors 51 and 52, diac 50, and the gate 57 of the triac 58. Thermistor 15 is connected between the terminal 21 and the junction of resistors 51 and 52 through the control set resistor 16.

#### Operation

The operation of the circuit in FIG. 3 is similar to that of FIG. 2 except that the relay portion has been replaced by a triac solid-state switching device. The impulse-forming circuit consisting of resistor 59, power adjust resistor 14, capacitor 61, diac 60 and transformer 63 perform exactly the same function as the similar elements shown in FIG. 1. When power is



applied to terminals 20, 21 current flows through resistor 51 and 52, through diac 53 and into the gate 57 of triac 58. Triac 58 will conduct causing current to flow through to capacitor 61 to form impulses to be applied alternately to the gates 55, 56 of silicon-controlled rectifiers 53 and 54 respectively. At room temperature, thermistor 15 is at a high resistance as the heater element 12 heats up. As the resistance of thermistor 15 decreases, the voltage at the junction of resistors 16, 51 and 52 will decrease. When a temperature is reached such that the voltage at that junction is less than the diac 50 breakdown voltage, current will no longer flow into the gate 57 of the triac 58. The triac 58 will no longer conduct, preventing current from flowing through to capacitor 61 and impulses will no longer be supplied to the silicon-controlled rectifiers 53, 54.

Again, control set resistor 16 is adjusted to select the desired temperature at which the power is shut off to the heater element 12.

FIG. 4 shows a second embodiment of the temperature control circuit according to my invention using a combination of a diac and a triac.

The circuit which includes the heater element 12 and the silicon controlled rectifiers 77, 78 contains the same arrangement of elements as the circuits in FIG. 2.

Connected between the power terminals 20, 21 are a triac 73 and the primary winding 76 of a saturable transformer 75. Thermistor 15 is part of a voltage divider arrangement which includes control set resistor 16 and resistor 71 connected in series with it across the power terminals 20, 21.

A capacitor 70 is connected through the power adjust resistor 14 to a junction of the voltage divider arrangement. A diac 72 connects one side of the voltage divider arrangement. A diac 72 connects one side of the capacitor 70 to the gate 74 of the triac 73.

#### Operation

With 50 volts r.m.s. applied to terminals 20, 21 circuit operation is as follows. During each half-cycle when terminal 20 is positive with respect to terminal 21 current will flow through the phase shift network of resistor 71, power adjust resistor 14 and capacitor 70, causing capacitor 70 to charge such that its terminal 82 is positive with respect to terminal 81. When the voltage across capacitor 70 is sufficient to exceed the breakdown voltage of diac 72 capacitor 70 will discharge through diac 72 into the gate terminal 74 of triac 73 causing the triac 73 to conduct and allowing current to flow through the primary winding 76 of transformer 75. Transformer 75 is a pulse transformer and as such will saturate easily. When saturation occurs, output voltage will become nil. Since conduction of triac 73 occurs at some point after the half-cycle has commenced, the waveform has an abrupt rise. The pulse transformer secondary windings 83, 84 will rise in voltage abruptly at the same time until saturation occurs and then will fall abruptly. The secondary voltage will therefore be a pulse of voltage occurring at the point in the half-cycle at which the triac 73 begins to conduct. The output pulse of secondary winding 84 applied to the gate 79 of silicon-controlled rectifier 77 will cause it to conduct from this point in the half-cycle until the end of the half-cycle.

During alternate half-cycles, capacitor 70 charges in the reverse polarity until breakdown voltage of diac 72 is reached, at which time triac 73 will conduct in the opposite direction. This will cause reverse polarity pulses to occur at the transformer secondary windings. The output pulses of secondary winding 83 applied to the gate 80 of silicon-controlled rectifier 78 will cause it to conduct for the partial half-cycle.

When the heater element 12 is cold, thermistor 15 which senses heater temperature is at a high value of resistance and very little current will flow through it. As the heater warms up, the thermistor decreases in resistance and begins to shunt current from the resistor 14 - capacitor 70 path. When operating temperature is reached, the resistance of the thermistor 15 is low enough to prevent the capacitor 70 from charging to the breakdown voltage of the diac 72 and triac 73 is prevented from conducting, thereby removing pulses from the silicon-

controlled rectifiers and no increase in heater temperature will occur.

Referring to FIGS. 5 and 6, the etched heater 90 is made from a laminated construction of a metal foil 91 bonded to a high-temperature composition insulating substrate 92. The binding medium is a flexible temperature-resistant cement. The metal foil 91 is chemically etched through to provide a continuous electrical circuit with a heater element strip 94 surrounding each blister-locating opening 93. The strip 94 has a sufficiently reduced width to operate at the proper sealing temperature when electric current is applied. The metal areas 95 between blister openings are much wider and thereby does not appreciably rise in temperature. The following metals are some of many that might be used for the heater foil.

Copper	Nichrome	Kovar
Nickel	Nickel-silver	Inconel
Chromium	Copper Nickel	Carbon Steel
Stainless steel	Invar	

The choice of metals is optional and is determined by the length and width of the heater element. The thickness is also a matter of convenience. However, the optimum range for etching processes is between 0.004 inch and 0.010 inch thick. Some suitable insulating substrates are: Asbestos-filled phenolic; silicon rubber and glass-filled melamine. These may be rigid or flexible and up to 1/8-inch thick. The bonding cements may be one of a number of known products of laminate manufacturers. These are mostly silicon-base types.

Present trays have a sheet of nonstick material, such as Teflon-coated fiber glass, cemented over the working surface to prevent the plastic blisters from sticking to the heater elements. The thickness of this sheet and the cement cause a temperature loss which requires a higher than otherwise necessary heater temperature for a good seal. The etched heater tray 90 has a sprayed-on and cured in place nonstick coating of a Teflon or silicon-base material, the thickness of which is 0.001 inch. This allows a substantially lower operating temperature which enhances heater life.

In FIG. 5, for ease of illustration, four blister openings 93 of rectangular shape are shown. Solid lines 96 are etched through to yield the heater strip 94 around each blister opening 93. Pins 97 are fixed on the tray to locate the cards upon the blisters. An area 98 around each pin 97 is etched through to prevent possible short circuits in case a metal platen is used in the heat-sealing machine to apply pressure during the sealing operation. Broken line 99 shows the path of electric heating current through each heater element and between heater elements. Etched lines 100 are required to block the current flow from unwanted paths that would bypass the heater areas. Other etched lines 101 have no relationship to the heater or electric current flow. However, by inspection it is obvious their presence simplifies the layout process. It is advisable to make a sketch of the layout before proceeding to ensure proper flow of current.

One way to construct the heater elements is to first cut out blister openings 93 in the laminate in exact locations to those on tray. Then lines 115 are scribed around each opening 93 the required width of the heater element, usually 1/4-inch and 1/4-inch masking tape 102 laid along the scribe lines 115 (FIG. 6B). Lines 100 required for proper electrical flow are added.

Most trays have blister openings 93 positioned in lines. Therefore, as can be seen in FIG. 5, 1/4-inch masking tape strips 102 can be positioned across the entire tray at the required distance from each opening 93 along each side of the blister opening 93. Then by cutting away small sections of the tape 102 a usable circuit will result. Lines 101 can be left in place or removed. Then lines 100 that run between opening centers can be added. The width of 103 is equal to the width of the heating strips around the openings.

In order to make the tray usable in multiprobe-type machines, masking tape is applied in the area 104 where all but the 50-volt probe contacts the tray. The 50-volt probe will

tive means in the current path of said impulse-forming means having gate means to control the conduction state thereof, means connected to said gate means having a breakdown voltage characteristic which determines its conduction state and adapted to be switched from conduction to nonconduction by said signal from said temperature-sensing means.

11. A heat-sealing machine according to claim 1 in which said selected means comprises resistance means which resistance is selectively decreased as the total linear length of heater element is increased to provide a constant heating value of current.

12. A heat-sealing machine according to claim 9 wherein said control circuit comprises a bidirectional conductive means having gate means to control the conduction state thereof, means connected to said gate means having a breakdown voltage characteristic which determines its conduction state, a saturable pulse transformer having a primary winding connected to said bidirectional conductive means and a pair of secondary windings attached to said partial cycle conduction control means, means connected to said breakdown voltage means and chargeable over time to at least the level of said breakdown voltage and adapted to be precluded from charging to said breakdown voltage level by said signal from said temperature-sensing means.

13. A heat-sealing machine according to claim 12 wherein said temperature-sensing means is shunt arranged with said chargeable means and has a resistance which decreases as the temperature which it senses increases.

14. A heat-sealing machine for sealing lids to preformed containers comprising a housing, an actuatable pressure head defining the heat-sealing position of said machine, an AC power source supported by said housing and having a pair of terminals thereon, a rigid backing member having means for

positioning at least one preformed container in operable relation to said pressure head, a sheet of heater element material secured over said rigid backing member and rigidly arranged electrical circuit in said sheet of heater element material over the surface of said backing etched through to provide a unitary arrangement of heat-sealing elements and conducting leads interconnected in a continuous electrical path between said terminals, said heat-sealing elements comprising unconvoluted strips of heater element material substantially surrounding said container positioning means and of relatively substantial width and material selected to provide a heat seal thereabout in a single pass, the width of said heat-sealing elements being many times its thickness, said conducting leads being arranged entirely over said backing member and formed integrally with said heat-sealing elements, said heat-sealing elements and said conducting leads lying entirely in a single plane and having a uniform thickness and composition of material from one end of said circuit path to the other.

15. A heat-sealing machine according to claim 14 in which the connecting lead portions of said sheet between heat-sealing strips have sufficient cross section to operate at no appreciable sealing temperature.

16. A heat-sealing machine according to claim 18 in which said sheet is etched through to provide contact surfaces at each end of said continuous electrical circuit to connect with said AC terminals.

17. A heat-sealing machine according to claim 14 wherein said sheet is bonded to an insulating substrate positioned upon said backing member.

18. A heat-sealing machine according to claim 14 wherein said sheet has a nonstick coating.

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contact the tray along one peripheral edge at 114 and the return probe will contact along the opposite peripheral edge at 116.

After the masking is complete, a coating of etch resistant material 105 is applied (FIG. 6C). When the etch resist 105 is dry all masking tape is removed (FIG. 6D) and the laminate is etched with a commercially available etchant such as Hunt Chemical Corporation RCE solution following the recommendations published by the manufacturer. Etching techniques are standard and need not be described here since they are all suitable because of the lack of close-tolerance-etching requirements for this application. After etching is complete, as indicated by visually noting the complete removal of metal in the desired areas, (FIG. 6E) the etch resist is removed per manufacturer's instructions (FIG. 6F). The finished circuit is then rinsed in clear agitated water to remove traces of etchant and baked at 150° F. for 2 hours to drive off all moisture. After drying, the heater elements are allowed to cool and are sprayed with a nonstick coating such as Dupont Teflon-s, then dried at 100° F. for 2 hours and baked at 350° F. for one-half hour to cure the coating.

Referring to FIG. 7, the rigid tray 106 is shown with the laminate comprising the substrate 92 and the etched heater foil 91 thereon. A hole 107 is drilled in the substrate 92 behind one of the heater strips 94 surrounding the blister openings 93. A corresponding hole 108 is drilled in the tray 106 so that a probe 111 carrying thermistor 15 may be inserted from below and be in close proximity to the heater element.

The completed heater circuit is attached to the surface of the tray 106 by flush machine screws (not shown) or by cementing in place with a temperature-resistant adhesive such as Dow Corning Silastic RTV 732. After attachment to the tray, the holes 93 for the card locating retractable pins 97 are drilled and the pins 97 inserted.

Similar aligned holes 112 are drilled through the tray 106 and the substrate 92 for connecting wires 110 of the temperature control circuit 109 and the wires inserted from below and soldered to the circuit at connections 113 in an area outside that which is contacted by the platen of the pressure head in the heat-sealing machine.

Alternately, trays intended for use with heat-sealing machines that contain portions of the temperature control circuit as described above in connection with FIG. 1, provide for connecting the thermistor probe and the power set resistor to the temperature control portions in the machine. This is accomplished by connecting these components to a predetermined area at the tray periphery to contact a multiconnection probe mounted to the platen of the machine.

For etched heaters, it is advantageous that a temperature control circuit be used because the cement which holds the metal heater foil 91 to substrate 92 will be decomposed at temperatures above approximately 450° F. permanently damaging the heater circuit. The nonstick coating material will also decompose at this temperature. Moreover, contact of the power probes is made directly on the circuit (at 114 and 116) and arcing cannot be tolerated since the metal foil is thin. In addition, overheating of the blister material which causes a poor seal, is precluded by the temperature control circuit.

It is known that present trays without temperature control which employ a Teflon sheet over the heater element have overheated to a temperature sufficient to damage the Teflon, which decomposes above 600° F. It can be concluded therefore, that damaging temperatures will occur if no control is employed.

In addition to its ease of manufacture and to its elimination of all welded or soldered connections to the heater elements, the etched heater affords great versatility in producing heater shapes of any kind with almost equal ease.

Although my invention has been shown and described with reference to particular embodiments it should be understood that departures may be made therefrom within the scope of my invention as set forth in the following claims.

What is claimed is:

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1. A heat-sealing machine for sealing lids to preformed containers comprising a housing, an actuatable pressure head defining the heat-sealing position of said machine, an AC power source supported by said housing having a pair of terminals thereon, means for supporting and positioning at least one preformed container in operable relation to said pressure head, means for positioning a lid upon said container, at least one heater element attached to said supporting and positioning means and adapted to be connected to said AC terminals and means connected in the circuit path of said heater element for controlling the partial cycle conduction of current in said path to set a predetermined power per unit length of said heater element and a control circuit connected to said partial cycle conduction control means to control the portion of the half-cycle during which conduction occurs for setting said power, said control circuit having means selected according to the resistance of said heater element to set a specific fixed phase angle for said partial cycle conduction control means appropriate to deliver said predetermined level of power to bring said heater element to operating sealing temperature.

2. A heat-sealing machine according to claim 1 wherein said control circuit is adapted to be connected between said AC terminals and to said partial cycle conduction control means and includes impulse-forming means for affecting said predetermined partial cycle conduction and means for switching off the flow of current from said power terminals to said impulse-forming means; and temperature-sensing means are located in proximity to said heater element and adapted to pass a signal to said control circuit when the temperature of said heater element rises to a predetermined level to switch off the flow of current to said impulse-forming means.

3. A heat-sealing machine according to claim 2 wherein said impulse-forming means includes resistance means selected to set said impulse timing, said resistance means and said temperature-sensing means being attached to and moveable with said supporting and positioning means into and out of said heat-sealing position and adapted to be connected to said control circuit when in said heat-sealing position, said control circuit and said partial cycle conduction control means being fixedly supported by said housing.

4. A heat-sealing machine according to claim 3 wherein said temperature-sensing means has a resistance means in series therewith for compensating for variation in the operating characteristics of the electrical elements in said control circuit, said resistance means being attached to and moveable with said supporting and positioning means.

5. A heat-sealing machine according to claim 1 wherein said control circuit includes impulse-forming means having a controllable time constant and power adjust means associated with said impulse-forming means selected to control the impulse timing to provide said predetermined heater power.

6. A heat-sealing machine according to claim 1 having means for switching off the power through said control circuit when said predetermined temperature is reached.

7. A heat-sealing machine according to claim 6 wherein said switching means is adapted to switch off only once per sealing operation.

8. A heat-sealing machine according to claim 2 wherein said current impeding means comprises relay means having a contact thereof in the current path of said impulse-forming means, and switching transistor means adapted for conduction in the energizing path of said relay means and adapted to receive said signal from said temperature sensing means to switch its conduction to it in said energizing path.

9. A heat-sealing machine according to claim 8 wherein said temperature sensing means has a resistance which decreases as the temperature which it senses increases, said temperature-sensing means being connected to vary the current at the terminal of said transistor means which controls said conduction state thereof and means provide DC current through said temperature sensing means to said conduction control terminal.

10. A heat-sealing machine according to claim 2 wherein said current-impeding means comprises bidirectional conduc-





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EXHIBIT C

See opposite page



This agreement is effective as of the 6th day of June, 1968, by and between Packaging Industries, Inc. of Off Airport Road, Hyannis, Massachusetts (previously Packaging Industries Limited, Inc.) hereinafter referred to as "LICENSOR", and Diematic Manufacturing Corp., of 220 West 19th Street, New York, New York, hereinafter referred to as "LICENSEE".

1. License Grant

LICENSOR represents and warrants that it is the owner of the United States Patent 3,170,275, issued February 23, 1965, and entitled "Means For Heat Sealing Lids on Blisters", hereinafter referred to as "Licensed Patent", and that it has the right to grant licenses under said patent. The LICENSOR hereby grants to the LICENSEE under the Licensed Patent a non-exclusive license without any right to grant sub-licenses, to make, use, and sell, for the term of nine(9) months, trays, embodying and/or for practicing one or more of the inventions claimed by the Licensed Patent relating to trays and to have repair and replacement parts made for such trays for said LICENSEE. This license is for a nine-month period from the date hereof and shall terminate at the end of the said nine-month period. However the royalty period, under Para. III, shall commence as of July 1, 1968.

## II. Records and Accounting Periods

The LICENSEE shall keep accurate records at its regular place of business, showing its transactions in apparatus embodying and/or for practicing said inventions in sufficient detail to enable the royalties hereinafter mentioned readily to be ascertained; and such pertinent records shall be open to inspection during usual business hours, for verification of accounting reports hereinafter mentioned, by any certified public accountant of the LICENSOR acceptable to the LICENSEE and at LICENSOR's expense. The LICENSEE shall not unreasonably withhold its acceptance. The hereinafter mentioned royalties shall be paid by the LICENSEE at the termination of the said nine-month period. Royalty payments and an accounting for the said period will be due and payable thirty (30) days after the close of the said nine-month period. Such accounting shall include an accurate statement by the LICENSEE of all apparatus embodying and/or for practicing the said inventions manufactured by the LICENSEE and sold by the LICENSEE either as separate units or as parts of devices, during the subject accounting period. The statement shall show in itemized form the total number and the total selling price (after deductions set forth in Section III below), of all such apparatus sold by the LICENSEE.

## III. Royalties

Simultaneously with the rendition of the said statement, the LICENSEE shall pay to the LICENSOR, in accordance with the statement so rendered, royalties,



computed separately for each apparatus, at the rate of seven and one-half (7-1/2%) per cent of the net selling price of each apparatus, after deduction of credits for returns, transportation charges, discounts, allowances and taxes or other Governmental charges absorbed by the seller.

LICENSOR shall be entitled to only one royalty in respect of any apparatus regardless of the number of inventions that may be embodied in it that may be used in its manufacture or that it may be capable of practicing.

14. Release and Payment of Paid-Up Royalty

Upon the execution of this agreement, the LICENSEE has paid to the LICENSOR the sum of Two Thousand Five Hundred Dollars (\$2,500.00), by a certified check, as a paid-up royalty and settlement in full for all apparatus embodying and/or practicing said inventions made, made for it, used or sold by LICENSEE prior to the date of this agreement. The Licensor, in regard to all such apparatus made, made for it, used or sold by LICENSEE prior to the date of this agreement, hereby releases LICENSEE and its customers, suppliers, employees and all other persons from any claim under the Licensed Patent.

The LICENSOR and LICENSEE agree to sign and file a stipulation in their pending litigations entitled, Packaging Industries Limited, Inc. v. Diematic Manufacturing Corp. 65 Civ. 2007, United States District Court for the Southern District of New York, and Packaging Industries Limited, Inc.

vs. Diematic Manufacturing Corp. and Alvin Reinecke, Supreme Court of the State of New York, New York County, in accordance with the annexed Appendix A and Appendix B, thereby dismissing those actions and the counter-claims therein with prejudice. In addition, at the same time as this agreement is executed, LICENSOR shall sign the "General Release" set forth in Appendix C and the "Covenant Not to Sue", set forth in Appendix D, both as annexed hereto. The "Individual Admission of Validity of Patents", set forth in Appendix E annexed hereto shall also be signed at the same time as this agreement is executed.

V. Admission of Validity of Patent

The LICENSEE admits the validity of the Licensed Patent and agrees not to contest the same directly or indirectly.

VI. Sale of Business

The License hereby granted shall be non-exclusive, non-divisible and non-assignable except that LICENSEE may assign this License in connection with the sale or transfer of its entire assets and business.

VII. Arbitration and Applicable Law

Questions of interpretation, enforcement and all disputes between the parties arising from this agreement shall be submitted to arbitration in New York City under the rules and auspices of the American Arbitration Association. This agreement shall be deemed to have been executed



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in New York and the parties hereto agree that the law of New York shall apply.

VIII. Notices

Any notice required to be given by either party to the other under this Agreement, unless otherwise specified, shall be considered to have been given if and when properly deposited for sending by registered or certified mail, prepared and properly addressed, in case of notices to LICENSOR, directed to:

PACKAGING INDUSTRIES, INC.  
Post Office Box 457  
Hyannis, Mass. 02602

or at such other address as LICENSOR may hereafter advise LICENSEE in writing; and in the case of notices to LICENSEE, directed to the attention of:

DIEMATIC MANUFACTURING CORP.  
220 West 19th Street  
New York, New York

or at such other address as LICENSEE may hereafter advise LICENSOR in writing.

IN WITNESS WHEREOF, the LICENSOR and the LICENSEE have executed this Agreement on the day and year written below.

PACKAGING INDUSTRIES, INC.

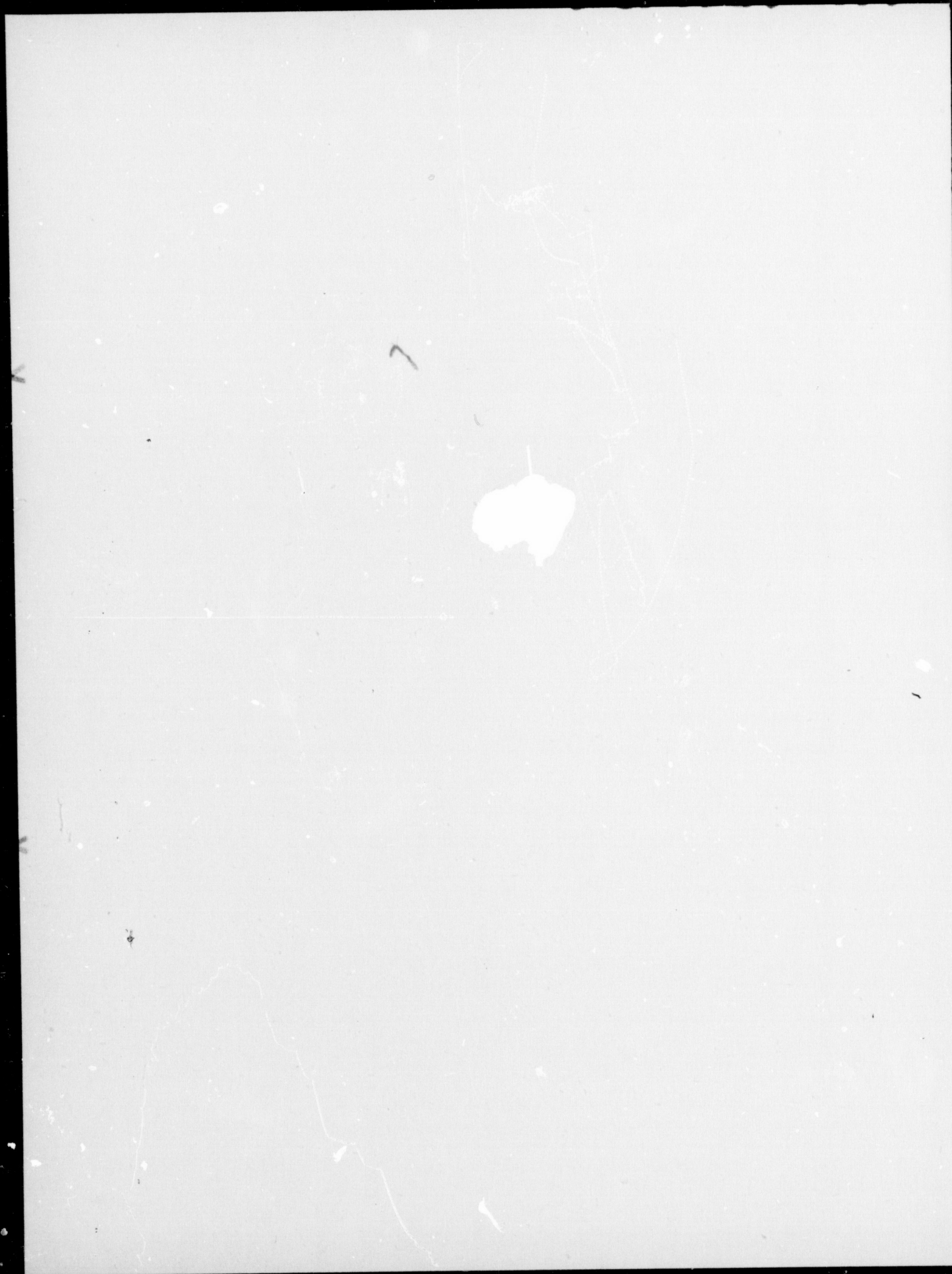
By [Signature]

Date JULY 6, 1968

DIEMATIC MANUFACTURING CORP.

By [Signature]

Date 7-1-68





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APPENDIX A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

Packaging Industries Limited, Inc.,

Plaintiff

- v -

Diematic Manufacturing Corp.,

Defendant

-----X

STIPULATION OF DISMISSAL

The parties hereto stipulate that this case and  
the counterclaims are and shall be dismissed with prejudice,  
as to all parties, as of this 5<sup>th</sup> day of JULY, 1968.

DIEMATIC MANUFACTURING CORP.

By

S. A. I.  
Its attorney  
Eliot S. Gerber  
310 Madison Avenue  
New York, N. Y. 10017  
Telephone 697-5888



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PACKAGING INDUSTRIES LIMITED, INC.

By



Its attorney

Elliot Ira Miller

90 Broad Street

New York, N. Y. 10004

Telephone 943-6040

SO ORDERED

United States District Judge

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APPENDIX B

SUPREME COURT  
COUNTY OF NEW YORK

----- X

PACKAGING INDUSTRIES LIMITED, INC., : Index No. 30861/  
1966

Plaintiff :

-against-

: STIPULATION  
: DISCONTINUING  
: ACTION

DIEMATIC MANUFACTURING CORP. and :  
ALVIN REINECKE :

Defendants

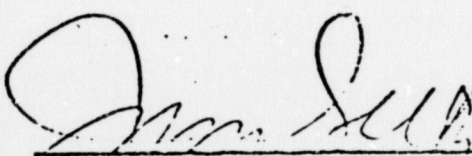
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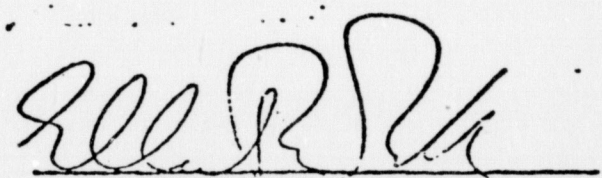
IT IS HEREBY STIPULATED AND AGREED, by and between  
the undersigned, the attorneys of record for all the parties  
to the above entitled action, that whereas no party hereto  
is an infant or incompetent person for whom a committee has  
been appointed and no person not a party has an interest  
in the subject matter of the action, the above entitled  
action, and the counterclaims, are, and the same hereby  
are discontinued, without costs to either party as against  
the other and with prejudice. This stipulation may be



filed without further notice with the Clerk of the Court.

Dated: JULY 5, 1968

  
JASON SELTZER  
Attorney for Defendant

  
ELLIOT IRA MILLER  
Attorney for Plaintiff

## APPENDIX C

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,  
GREETING: KNOW YE, That PACKAGING INDUSTRIES, INC. (PACKAGING INDUSTRIES LIMITED, INC.) a corporation, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States of America to it in hand paid by Diematic Manufacturing Corp., Alvin Reinecke, Raymond Rozman, David Bagoff, Anthony Griffo, Mitchell Lacher and Frank Carnegie, Jr., the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said Diematic Manufacturing Corp., Alvin Reinecke, Raymond Rozman, David Bagoff, Anthony Griffo, Mitchell Lacher and Frank Carnegie, Jr., their heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty,



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or in equity, which against Diematic Manufacturing Corp.,  
Alvin Reinecke, Raymond Rozman, David Bagoff, Anthony Griffo,  
Mitchell Lacher and Frank Carnegie, Jr. it ever had, now  
has or which it or its successors hereafter can, shall or  
may have for, upon or by reason of any matter, cause or  
thing whatsoever from the beginning of the world to the day  
of the date of these presents.

This release may not be changed orally.

APPENDIX D

COVENANT NOT TO SUE

PACKAGING INDUSTRIES LIMITED, INC., hereby covenants that it will not now, or in the future, sue DIEMATIC MANUFACTURING CORP., or its suppliers or customers, under United States Patent 3,170,275, issued February 23, 1965, and entitled "Means for Heat Sealing Lids on Blisters", in regard to the apparatus, listed below, made, made for, sold or used by DIEMATIC MANUFACTURING CORP. The said apparatus is: (i) trays for heat sealing which are formed by an etching process and which do not utilize an electrode positioned between two sheets of non-sticking material; or (ii) a machine for heat-sealing lids on blisters, which machine utilizes a closed loop heat control system employing a heat sensitive transducer, such as a thermistor, and which machine does not utilize a plurality of contacts having predetermined locations with each contact supplying a predetermined voltage differing from the voltage supplied by the others of said contacts, a prototype of the said machine



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having been shown at the A.M.A. Packaging Show at the New York Coliseum in May, 1968 or (iii) trays for heat sealing, of whatever description, which are built or rebuilt to incorporate a heat control for use in a machine as described in (ii) above.

PACKAGING INDUSTRIES INC.

By:

*John D. Benton Vice Pres.*

IN WITNESS WHEREOF, the said PACKAGING INDUSTRIES, INC., (PACKAGING INDUSTRIES LIMITED, INC.) has caused its corporate seal to be hereto affixed and these presents to be signed by its duly authorized officer on the 6<sup>th</sup> day of JULY 1968

(Corporate Seal)

PACKAGING INDUSTRIES INC.

BY John D. Barnbara

STATE OF Massachusetts COUNTY OF Barnstable ss.:

On the 6<sup>th</sup> day of July 1968  
before me personally came John D. Barnbara

to me known, who, being by me duly sworn, did depose and say that he resides at No. Munimaha Road.

Gapponeau Beach, Mass.  
that he is the Vice President of Packaging Industries, the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation; and that he signed his name thereto by like order.

Jeremiah P. Quinlan  
Notary Public

My Commission Expires:  
March 23rd, 1973

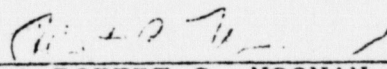


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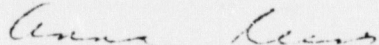
STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK)

ROBERT C. NOONAN, being duly sworn, deposes and  
says:

1. That I am over eighteen years of age and am  
not a party to this action.
2. That on the 3rd day of May, 1974 at approxi-  
mately 3:45 P.M., I served a copy of the within NOTICE OF  
MOTION upon Wyatt, Gerber & shoup, attorneys for plaintiff, at  
230 Park Avenue, New York, New York, 10017, by personal delivery  
thereof, the address being designated for that purpose.
3. That personal service was made by leaving  
the aforementioned NOTICE OF MOTION with the receptionist,  
at the address indicated above.

  
\_\_\_\_\_  
ROBERT C. NOONAN

Sworn to before me this  
3rd day of May, 1974.

  
\_\_\_\_\_  
Notary Public

ANNA REISS  
Notary Public, State of New York  
No. 41-3247510, Qual. in Queens Co.  
Term Expires March 30, 1975

FILED  
DISTRICT COURT  
1 4 21 PM '74  
S.D. OF N.Y.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
DIEMATIC MANUFACTURING CORP., :  
Plaintiff, : 74 Civ. 1557-LFM  
-against- : OPINION  
PACKAGING INDUSTRIES, INC., :  
Defendant. : #41168  
-----x

APPEARANCES:

Wyatt, Gerber & Shoup, New York  
City, for plaintiff; Eliot S.  
Gerber, of counsel.

Miller & Summit, New York City,  
for defendant; Gerard A. Dupuis  
and Paul D. Siegfried, of counsel.

MacMAHON, District Judge.

Plaintiff, Diematic Manufacturing Corp. (Die-  
matic), seeks an order staying certain arbitration pro-  
ceedings before the American Arbitration Association,  
entitled "Packaging Industries, Inc., Petitioner vs.  
Diematic Manufacturing Corp., Respondent/Commercial  
Arbitration." The proceedings were commenced pursuant

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to a demand for arbitration made by defendant Packaging Industries, Inc. (Packaging), on March 21, 1974. Defendant cross-moves for a stay of this action pending completion of the arbitration proceedings and for an order dismissing the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. Rule 12(b)(1) and (6), Fed.R.Civ.P.

Both plaintiff and defendant manufacture trays and toolings for impulse sealing machinery used in connection with transparent blister packaging of small consumer items, such as razor blades. Both hold patents covering the process by which they produce trays.<sup>1</sup>

On June 6, 1968, in settlement of litigation in this court brought by Packaging against Diematic for infringement of its patent, the parties signed a license agreement. Under the agreement, Packaging licensed Diematic to employ its patented process for producing trays for a nine-month period, beginning July 1, 1968. In addition to paying royalties to Packaging, Diematic admitted the validity of Packaging's patent and agreed "not to contest the same directly or indirectly." The agreement stated that:

"[q]uestions of interpretation, enforcement and all disputes between the parties arising from this agreement shall be submitted to arbitration in New York City under the rules and auspices of the American Arbitration Association."

Packaging also agreed to sign a covenant not to sue, which was annexed as an appendix to the agreement. The covenant provided that Packaging would not, in reliance on its patent, sue Diematic in regard to the apparatus used by Diematic to produce trays.

All remained peaceful between the parties until March 20, 1974, when Packaging filed a demand for arbitration, alleging that Diematic, subsequent to the expiration of the nine-month license period, had continued to manufacture and sell trays covered by Packaging's patent, thereby infringing the patent and breaching the agreement. Thereafter, on April 5, 1974, Diematic brought this action, seeking (1) a declaratory judgment that Packaging's patent was invalid and/or that Diematic was not infringing the patent, (2) a stay of the arbitration proceedings, and (3) treble damages for violation of the antitrust laws.



Plaintiff contends that the arbitration proceedings should be stayed<sup>1</sup> because (1) the agreement has expired, (2) defendant's claim in arbitration is for patent infringement arising from its statutory patent rights and is, therefore, a case within the exclusive jurisdiction of the federal courts, and (3) arbitration<sup>2</sup> is not, in any event, appropriate in this case.

Plaintiff's first argument is without merit. Although the license granted to Diematic in the agreement was for a nine-month period, which has expired, the other obligations in the agreement, including Diematic's promise not to contest the validity of the patent, are not specifically limited in duration to a nine-month period or any other time limitation. These obligations are still in effect.

As Packaging urges, it would have been absurd for it to settle an action involving infringement of its patent and exact a promise from the alleged infringer, Diematic, that the latter would not dispute the validity of Packaging's patent for a mere nine months. The agreement makes sense only if it is seen as the granting of a limited license to Diematic by Packaging in exchange for

Diematic's promise not to contest the patent thereafter.

When the parties intended to limit the duration of certain parts of the agreement, they knew how to do so, as in the granting of the license for only nine months. Diematic's promise not to contest the validity of the Packaging patent contains no such time limitation, nor does the contract itself state that it shall terminate after nine months. Thus, we think it clear that the nine-month period was not intended by the parties to apply to any obligation in the contract except the license.

Since the parties have not specified the duration of the covenant not to contest validity, that covenant remains in effect for a reasonable time under the circumstances.<sup>3</sup> In this situation, a reasonable time is the period during which Packaging's patent is valid and in effect. Since the patent has not yet expired nor been declared invalid, Diematic's obligation not to contest the patent remains in effect and any disputes relating to this continuing obligation are, of course, covered by the arbitration clause.



The second issue raised by plaintiff is more troublesome, and its resolution depends upon our interpretation of the claim raised in defendant's demand for arbitration. It has long been the law that not all cases involving patents or the interpretation of the patent laws fall within the exclusive jurisdiction of the federal courts under 28 U.S.C. § 1338(a).<sup>4</sup> Rather, the court must look to the claim asserted to determine whether it is created by the patent laws (e.g., a claim for infringement)<sup>5</sup> or is based upon some right created by state law.

Thus, where a suit is based upon a license or royalty agreement and seeks specific performance or damages for breach of contract, the action does not "arise" under the patent laws and a federal court has no jurisdiction over the case absent diversity of citizenship.<sup>6</sup> Moreover, a state court may, if necessary to decide the case before it, determine questions involving the scope,<sup>7</sup> validity or infringement of the patent.

Plaintiff reads the statement of the "Nature of Dispute" in Exhibit A to the demand for arbitration as reciting a claim for patent infringement. Defendant replies that the claim is based solely on plaintiff's





promise in the agreement not to contest the validity of Packaging's patent and, therefore, states a claim for breach of contract. Exhibit A, after reciting the underlying facts in the controversy, states that:

"Respondent [Diematic] has manufactured used and sold trays covered by the patent and therefore has infringed and is infringing upon the patent owned by Claimant [Packaging] and has breached the Agreement."

In Exhibit B to the demand, Packaging seeks the following relief:

- "1. A full and accurate accounting of all revenues in any way attributable to [Diematic's] infringement upon [Packaging's] patent. . . .
2. A permanent injunction whereby [Diematic] will be prohibited from infringing upon [Packaging's] patent."

The language quoted above leads us to the conclusion that Packaging's claim rests both upon its patent and upon the agreement. Thus, two claims are raised--one for patent infringement, one for breach of contract. Obviously,

the patent infringement claim falls within the exclusive jurisdiction of the federal courts under 28 U.S.C. § 1338(a) and may not be decided by the arbitrators or the state courts. This would leave the breach of contract claim to arbitration. Because of the nature of the issues raised by this claim, however, we think it should not be decided by the arbitrators and that consequently arbitration should be stayed.

The breach of contract claim is based upon Diematic's obligation not to contest the validity of Packaging's patent. Since such an obligation is "a covenant not to manufacture or sell the patented commodity without the consent of the patentee,"<sup>8</sup> Diematic has, in effect, promised not to infringe Packaging's patent. Thus, the determination of whether Diematic has breached the agreement will necessarily depend upon whether an infringement has occurred. This issue of infringement, we think, as well as any related issues of patent validity, should be decided not by the arbitrators, but by a court of law.

Questions of patent law are not mere private matters.<sup>9</sup> The patent laws, in sharp contrast to the



general federal policy encouraging free competition expressed in the antitrust laws, grant limited monopolies to inventors.<sup>10</sup> Thus, the public has an important interest in the determination of patent validity and infringement, even though those issues may be decided in the context of a private lawsuit.<sup>11</sup> We think, as have other courts which have considered this issue, that the grave public interest in questions of patent validity and infringement renders them inappropriate for determination in arbitration proceedings.<sup>12</sup>

Our conclusion is reinforced by an analogous decision of our Court of Appeals in the antitrust field.<sup>13</sup> In American Safety, a party to a trademark license agreement sought to avoid arbitration of a claim for royalties under the agreement, claiming that the contract was void for violation of the antitrust laws. The district court refused to enjoin arbitration, but the Court of Appeals remanded for consideration of the antitrust issues by the district court, concluding that "the pervasive public interest in enforcement of the antitrust laws, and the nature of the claims that arise in such cases, combine to make [them] . . . inappropriate for arbitration."<sup>14</sup> The same considerations cited in American Safety, we

believe, apply in the patent field and, therefore, we conclude that the issues raised by Packaging's claim are inappropriate for arbitration and that arbitration should, consequently, be stayed. It follows from our decision to stay arbitration that there is no reason why this action should not go forward and, therefore, defendant's motion to stay this action pending arbitration is denied.

We turn, now, to defendant's motion to dismiss.

Defendant first contends that we should, in our discretion, refuse to permit plaintiff to bring its claim for declaratory relief because this action is "simply an effort to invoke the jurisdiction of this court to the exclusion of the arbitration proceeding previously instituted." Citing Public Serv. Comm'n v. Wycoff Co., 344 U.S. 237 (1952), defendant claims that proper respect for the arbitrators, as well as the nature of plaintiff's claim, indicate that we should not take jurisdiction of the declaratory claim. As we have already held, however, we think arbitration an inappropriate forum for determination of the patent questions



raised by defendant. Thus, unlike Wycoff, there is no real issue of comity or respect for another forum here. Moreover, we are presented with a real case and controversy. Defendant, in its attempt to arbitrate the dispute, has alleged infringement of its patent. Plaintiff, by filing this suit, has denied both infringement and the validity of defendant's patent. Thus, a real dispute exists between the parties. The element of prematurity which was present in Wycoff, 344 U.S. at 245-46, is absent here. We conclude, therefore, that plaintiff has properly brought its declaratory action and refuse to dismiss it.

Defendant also argues, relying on Diematic's admission of the validity of the Packaging patent and its agreement not to contest it, that plaintiff is barred from bringing this action.<sup>15</sup> This contention need not detain us long.

Several courts have held that a covenant not to contest a patent is void and unenforceable and does not bar raising the issue of validity, either affirmatively or as a defense.<sup>16</sup>

In Lear, Inc. v. Adkins, 395 U.S. 653, 670-71 (1969), the Supreme Court held that the doctrine of licensee estoppel will not bar a patent licensee from challenging the validity of his licensor's patent in a suit for royalties. The Court based its holding on "the important public interest in permitting full and free competition in the use of ideas" and the fact that "[l]icensees may often be the only individuals with enough economic incentive to challenge the patentability of an inventor's discovery." 395 U.S. at 670.

The considerations relied on by the Court in Lear are equally valid with regard to agreements not to contest patent validity and indicate that enforcement of such agreements is contrary to the policy and spirit of the patent laws. In light of Lear, therefore, we conclude, as have other courts to consider this issue, that agreements not to contest patent validity are void, as in conflict with federal patent policy.<sup>17</sup> Since Diematic's promise not to contest the validity of Packaging's patent is void, Diematic is not barred from bringing this action, and the motion to dismiss must be denied.

Accordingly, plaintiff's application for an order staying the arbitration proceeding, entitled

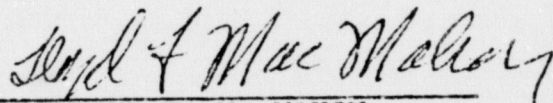


"Packaging Industries, Inc., Petitioner vs. Diematic Manufacturing Corp., Respondent/Commercial Arbitration," is granted. Defendant's cross-motion for a stay of this action pending arbitration is denied. Defendant's motion to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted, Rules 12(b)(1) and (6), is denied.

Settle order on notice within ten (10) days.

Dated: New York, N. Y.

September 13, 1974



LLOYD F. MacMAHON  
United States District Judge

Diematic Manufacturing Corp. v.  
Packaging Industries, Inc.

74 Civ. 1557-LFM

FOOTNOTES

1

Packaging's patent is No. 3,170,275, issued February 23, 1974. Diematic's patent is No. 3,617,696, issued in 1971.

2

Plaintiff also claims that arbitration is barred by defendant's covenant not to sue, but in view of our resolution of plaintiff's other arguments, it is not necessary for us to decide this issue.

3

Metal Associates, Inc. v. East Side Metal Spinning & Stamping Corp., 165 F.2d 163 (2d Cir. 1947).

4

Kysor Indus. Corp. v. Pet, Inc., 459 F.2d 1010 (6th Cir. 1972).

5

See, American Well Works Co. v. Layne & Bowler Co., 241 U.S. 257 (1916); Koratron Co. v. Deering Milliken, Inc., 418 F.2d 1314 (9th Cir. 1969).

6

Lockett v. Delpark, Inc., 270 U.S. 496, 510 (1926); Wade v. Lawder, 165 U.S. 624 (1897); Lear Siegler, Inc. v. Adkins, 330 F.2d 595, 599 (9th Cir. 1964); McMullen v. Bowers, 102 F. 494 (9th Cir. 1900).

7

Pratt v. Paris Gas Light & Coke Co., 168 U.S. 255, 259 (1897); Lear Siegler, Inc. v. Adkins, *supra*, 330 F.2d at 600; Imperial Appliance Corp. v. Hamilton Mfg. Co., 430 F.2d 185 (7th Cir. 1970). See, Lear, Inc. v. Adkins, 395 U.S. 653 (1969).

8

Business Forms Finishing Serv., Inc. v. Carson, 452 F.2d 70 (7th Cir. 1971).



9

Cf. American Safety Equip. Corp. v. J.P. Maguire & Co., 391 F.2d 821, 826 (2d Cir. 1968).

10

Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co., 324 U.S. 806, 816 (1945).

11

Lear, Inc. v. Adkins, supra, 395 U.S. at 670.

12

Beckman Instruments, Inc. v. Technical Dev. Corp., 433 F.2d 55, 63 (7th Cir. 1970); Leesona Corp. v. Cotton Mfg. Corp., Judson Mills Div., 204 F. Supp. 141 (D. S.C. 1962), aff'd, 315 F.2d 538 (4th Cir. 1963); Zip Mfg. Co. v. Pep Mfg. Co., 44 F.2d 184, 186 (D. Del. 1930).

13

American Safety Equip. Corp. v. J.P. Maguire & Co., supra, 391 F.2d at 821.

14

391 F.2d at 827-828.

15

Defendant directs this argument to the entire complaint, reasoning that the antitrust claim (Count III) rests upon an allegation that defendant's patent is invalid.

16

Business Forms Finishing Serv., Inc. v. Carson, supra, 452 F.2d at 75; Massillon-Cleveland-Akron Sign Co. v. Golden State Advertising Co., 444 F.2d 425 (9th Cir. 1971); Plastic Contact Lens Co. v. W.R.S. Contact Lens Laboratories, Inc., 330 F. Supp. 441 (S.D.N.Y. 1970); Kraly v. National Distillers & Chem. Corp., 319 F. Supp. 1349 (N.D. Ill. 1970); Rialto Prod., Inc. v. Rayex Corp., 166 U.S.P.Q. 222 (Sup. Ct. Queens Cty. 1970).

17

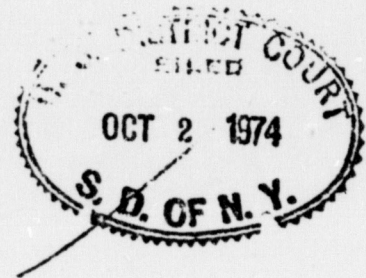
See cases cited above. Cf. Edward Katzinger Co. v. Chicago Metallic Mfg. Co., 329 U.S. 394 (1947).

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
DIEMATIC MANUFACTURING CORPORATION, :  
Plaintiff :  
:  
-vs- : 74 Civ. 1557 - LFM  
:  
PACKAGING INDUSTRIES, INC., :  
Defendant :  
-----X



CONSENT  
ORDER

Upon consideration of plaintiff Diematic Manufacturing Corporation's Motion staying certain arbitration proceedings before the American Arbitration Association entitled "Packaging Industries, Inc., Petitioner vs. Diematic Manufacturing Corp., Respondent/Commercial Arbitration" commenced pursuant to a demand for arbitration made by defendant Packaging Industries, Inc. on March 21, 1974; and

Upon consideration of defendant Packaging Industries, Inc.'s Motion for stay of this action pending completion of the arbitration proceedings; and

Upon consideration of defendant Packaging Industries, Inc.'s Motion for an order dismissing the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted:



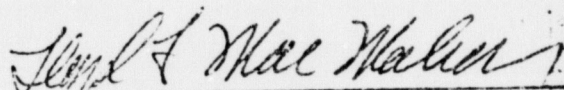
IT IS HEREBY ORDERED:

That plaintiff's application for a stay of the arbitration proceedings entitled "Packaging Industries, Inc., Petitioner vs. Diematic Manufacturing Corp., Respondent/Commercial Arbitration" is granted;

That defendant's cross-motion for a stay of this action pending arbitration is denied; and

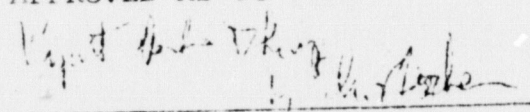
That defendant's motion to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted is denied.

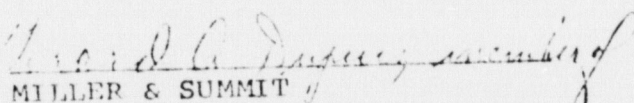
SO ORDERED:

  
United States District Judge

✓ Dated: SEPTEMBER 30, 1974.

APPROVED AS TO FORM:

  
WYATT, GERBER & SHOUP  
Attorneys for Plaintiff  
230 Park Avenue  
New York, New York 10017

  
MILLER & SUMMIT  
Attorneys for Defendant  
90 Broad Street  
New York, New York 10004

C 321—Affidavit of Service by Mail.  
Affirmation of Service by Mail on Reverse Side.

UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

DIEMATIC MANUFACTURING CORP.,

Plaintiff—Ap

against

PACKAGING INDUSTRIES, INC.,

Defendant—Ap


STATE OF NEW YORK, COUNTY OF

*The undersigned being duly sw*

*Deponent is not a party to the action, is over 18 years of age and resides at*  
Brooklyn, New York

*That on the* 17th *day of* Janu  
AP DEFENDANT-APPELLANT'S APPENDI  
Wyatt, Gerber & Shoup  
*on* Plaintiff-Appellee  
*attorney(s) for* 230 Park Avenue - New  
*in this action at*  
*the address designated by said attorney(s) for the*  
*in a postpaid properly addressed wrapper, in — 2 X 2*  
*and custody of the United States Post Office, Department of*  
Sworn to before me / Postal Ser

*this* 17th *day of* January, 19 75

  
Notary Public  
ANNA REISS

Notary Public, State of New York  
No. 41-3247510, Qual. in Queens Co.  
Term Expires March 30, 1975



*Index No.*

74-2452

pellee,

**AFFIDAVIT OF SERVICE  
BY MAIL**

pellant.

NEW YORK

ss.:

orn, deposes and says:

rs of age and resides at 1504 Ocean Avenue,

ary, 19 75 deponent served the annexed

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York, New York

at purpose by depositing a true copy of same enclosed

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~~ment~~ within the State of New York., at approximately

Vice 4:00 P.M.

*Phyllis R. Thomas*

The name signed must be printed beneath

PHYLLIS R. THOMAS